THE FREEDOM OF INFORMATION ACT: CENTRAL INTELLIGENCE AGENCY EXEMPTIONS

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

H.R. 5129, H.R. 7055, and H.R. 7056

TO ENHANCE THE FOREIGN INTELLIGENCE AND LAW ENFORCEMENT ACTIVITIES OF THE UNITED STATES BY IMPROVING THE PROTECTION OF INFORMATION NECESSARY TO THEIR EFFECTIVE OPERATION

FEBRUARY 20 AND MAY 29, 1980

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THE FREEDOM OF INFORMATION ACT: CENTRAL INTELLIGENCE AGENCY EXEMPTIONS

WEDNESDAY, FEBRUARY 20, 1980

HOUSE OF REPRESENTATIVES,
GOVERNMENT INFORMATION
AND INDIVIDUAL RIGHTS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:10 p.m., in room 2247, Rayburn House Office Building, Hon. Richardson Preyer (chairman of the subcommittee) presiding.

Present: Representatives Richardson Preyer, Robert F. Drinan, David W. Evans, Peter H. Kostmayer, Ted Weiss, Thomas N. Kindness, and John N. Erlenborn.

Also present: Timothy H. Ingram, staff director; Christopher J. Vizas, counsel; Euphon Metzger, clerk; and Thomas G. Morr, minority professional staff, Committee on Government Operations.

Mr. PREYER. The subcommittee will come to order.

We meet today to receive the testimony of the Central Intelligence Agency regarding the effect of the Freedom of Information Act on its operations. This hearing will begin a dialog of what, if any, changes may be necessary in the public information laws over which this subcommittee has jurisdiction.

It is with both pleasure and pride that I open this hearing: Pleasure that we can carry on this discussion with cooperation rather than conflict and confrontation; pride that we pursue this dialog about the priorities and needs of even the most sensitive operations of our Government in an open and public manner; and pride that the Central Intelligence Agency accepts the underlying principles of freedom of information—the necessity in our system of government of an informed citizenry as well as the need for the institutions of our Government to be publicly accountable to the citizens.

Indeed, the presence of the CIA here today to present its problems and perspectives is a reaffirmation of the basic principles of the Freedom of Information Act.

As Deputy Director Carlucci pointed out in his testimony before the House Intelligence Committee last April, the authorized and legitimate activities of the CIA which need to be kept secret can be kept secret within the basic strictures of the FOIA. The problems with the FOIA are largely matters of perception, not substance. Some foreign intelligence sources and services apparently believe that because of the FOIA their actions will be made public if they cooperate with the Agency.

Even as we recognize this problem of perception, however, we must remain aware of another potential problem of perception. It is all too easy to recreate with a blank wall of secrecy the impression that the CIA is somehow above the law—an impression which can only damage the trust of the American people in their Government and, inevitably, the effectiveness of this Nation's intelligence operations.

A delicate tension exists between our fundamental notions of a democratic society based on openness and informed participation by citizens and the need for effective intelligence operations. We have struggled with this tension as a government and as a people for the three decades of the CIA's life. We are still working out the balance. Indeed, no one should wonder that we are. Peacetime intelligence operations are relatively new to this Nation, the product of our acceptance of enormous international responsibilities in the wake of the Second World War.

The ideas of an informed citizenry and public accountability of public institutions have been alive in our national consciousness since before we adopted our Constitution nearly two centuries ago. The Freedom of Information Act is simply the latest link in a chain of law and tradition which attempts to preserve and protect those ideas.

I hope, and I know that our members of the subcommittee share my hope, that this hearing will ultimately lead us closer to fashioning the final and proper balance between the need to pursue legitimate intelligence activities and the equally important need for appropriate public accountability.

[The bills, H.R. 5129, H.R. 7055, and H.R. 7056, follow:]

I

96TH CONGRESS
1ST SESSION

H. R. 5129

To enhance the foreign intelligence and law enforcement activities of the United States by improving the protection of information necessary to their effective operation.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 1979

Mr. MCCLORY (for himself, Mr. RHODES, Mr. ASHBROOK, Mr. ROBINSON, Mr. YOUNG of Florida, Mr. WHITEHURST, Mr. ICHORD, Mr. DERWINSKI, Mr. COLLINS of Texas, Mr. WINN, Mr. HYDE, Mr. LAFALCE, Mr. RUDD, Mr. SENSENBRENNER, Mr. LUNGREN, Mr. REGULA, Mr. DANNEMEYER, Mr. ROYER, and Mr. MCDONALD) introduced the following bill; which was referred jointly to the Permanent Select Committee on Intelligence and the Committee on Government Operations

---

A BILL

To enhance the foreign intelligence and law enforcement activities of the United States by improving the protection of information necessary to their effective operation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Intelligence and Law Enforcement Enhancement Act of 1979".

SEC. 2. Section 6 of the Act of June 20, 1949 (50 U.S.C. 403(g)) (commonly known as the "Central Intelligence Agency Act of 1949"), is amended to read as follows:

"SEC. 6. In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 102(d)(3) of the National Security Act of 1947 (50 U.S.C. 403(d)(3)) that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of any law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency. In furtherance of the responsibility of the Director of Central Intelligence to protect intelligence sources and methods, information in files maintained by the Agency or the National Security Agency shall also be exempted from the provisions of any law which require the publication or disclosure, or the search or review in connection therewith, of information if such files have been specifically designated by the Director of Central Intelligence to be concerned with—

"(1) the design, function, deployment, exploitation or utilization of scientific or technical systems for the collection of foreign intelligence or counterintelligence information;

"(2) special activities and foreign intelligence or counterintelligence operations;

"(3) investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources; or

"(4) intelligence and security liaison arrangements or information exchanges with foreign governments or their intelligence or security services,

except to the extent that information on American citizens and permanent resident aliens requested by such persons on themselves, pursuant to sections 552 and 552a of title 5, may be contained in such files. The provisions of this section shall not be superseded except by a provision of law which is enacted after the date of enactment of paragraphs (1) through (4) and which specifically repeals or modifies the provisions of this section.".

SEC. 3. Section 552 of title 5, United States Code, is amended—

(1) by inserting at the end of paragraph (3) of subsection (a) the following new sentence: "This paragraph does not require a law enforcement or intelligence agency to disclose information to any person convicted of a felony under the laws of the United States or of any State, or to any person acting on behalf of any felon excluded from this section.";

(2) by adding at the end of subparagraph (B) of subsection (a)(4) the following new sentences: "If the court examines the contents of a law enforcement or intelligence agency's records withheld by the agency under subsection (b)(1), (b)(3), (b)(7)(A), or (b)(7)(B)(iv), the examination shall be in camera. The court shall maintain under seal any affidavit submitted by a law enforcement or intelligence agency to the court in camera. In making a de novo determination under this paragraph with respect to records withheld by an agency under subsection (b)(3) as being records specifically exempted from disclosure by section 798 of title 18, the court shall rely on agency affidavits and shall not order such agency records to be indexed or produced for ex parte or other review unless the court finds, under the substantive categories for protection established in that statute, that there appears to be no basis on which such records could have been specifically designated for limited or restricted dissemination or distribution by an agency authorized to make such a designation.";

(3) by striking out clause (i) of subsection (a)(6)(A) and inserting in lieu thereof the following:

"(i)(I) notify the person making the request of the receipt of the request and notify the person making the

request within thirty days after receipt of the request of the number of pages encompassed by the request and the time limits imposed by this paragraph upon the agency for responding to the request;

"(II) determine whether to comply with the request and notify the person making the request of such determination and the reasons therefor within sixty days from receipt of the request (excepting Saturdays, Sundays, and legal public holidays) if the request encompasses less than two hundred pages of records with an additional sixty days (excepting Saturdays, Sundays, and legal public holidays) permitted for each additional two hundred pages of records encompassed by the request, but all determinations and notifications shall be made within one year; and

"(III) notify the person making the request of the right of such person to appeal to the head of the agency any adverse determination; and";

(4) by striking out "due diligence in responding to the request, the court may retain jurisdiction and allow the agency" in subsection (a)(6)(C) and inserting in lieu thereof "due diligence in attempting to respond to the request, the court shall allow the agency";

(5) by striking out subparagraph (7) of subsection (b) and inserting in lieu thereof the following:

"(7)(A) records maintained, collected, or used for foreign intelligence, foreign counterintelligence, organized crime, or terrorism purposes; or

"(B) records maintained, collected, or used for law enforcement purposes, but only to the extent that the production of such law enforcement records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy or the privacy of a natural person who has been deceased for less than twenty-five years, (iv) tend to disclose the identity of a confidential source, including a State or municipal agency or foreign government which furnished information on a confidential basis, and in the case of a record maintained, collected, or used by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by the confidential source including confidential information furnished by a State or municipal agency or foreign government, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of any natural person;"

(6) by striking out "shall be provided to in person" in the matter following paragraph (9) of subsection (b) and inserting in lieu thereof the following: "not already in the public domain which contains information pertaining to the subject of a request shall be provided to any person properly";

(7) by striking out subsection (c) and inserting in lieu thereof the following:

"(c)(1) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section.

"(2) This section shall not require a law enforcement or intelligence agency to—

"(A) make available any records maintained, collected, or used for law enforcement purposes which pertain to a law enforcement investigation for seven years after termination of the investigation without prosecution or seven years after prosecution; or

"(B) disclose any information which would interfere with an ongoing criminal investigation or foreign intelligence or foreign counterintelligence activity, if the head of the agency or in the case of the Department of Justice, a component thereof, certifies in writing to the Attorney General, and the Attorney General determines, disclosing that information would interfere

with an ongoing criminal investigation or foreign intelligence or foreign counterintelligence activity.

"(3) This section is not authority to withhold information from Congress.";

(8) by striking out "March 1" each place it appears in subsection (d) and inserting in lieu thereof "December 1";

(9) by striking out "preceding calendar year" in subsection (d) and inserting in lieu thereof "preceding fiscal year";

(10) by striking out "prior calendar year" in subsection (d) and inserting in lieu thereof "prior fiscal year"; and

(11) by striking out subsection (e) and inserting in lieu thereof the following:

"(e) For the purpose of this section—

"(1) the term 'agency' as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency;

"(2) the term 'person' means a United States person as defined by the Foreign Intelligence Surveillance Act of 1978;

"(3) the term 'foreign intelligence' means information relating to the capabilities, intentions, and activities of foreign powers, organizations, or persons;

"(4) the term 'foreign counterintelligence' means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, international terrorist activities or assassinations conducted for or on behalf of foreign powers, organizations, or persons;

"(5) the term 'terrorism' means any activity that involves a violent act that is dangerous to human life or risks serious bodily harm or that involves aggravated property destruction, for the purpose of—

"(A) intimidating or coercing the civil population or any segment thereof;

"(B) influencing or retaliating against the policies or actions of the Government of the United States or of any State or political subdivision thereof or of any foreign state, by intimidation or coercion; or

"(C) influencing or retaliating against the trade or economic policies or actions of a corpora-

tion or other entity engaged in foreign commerce, by intimidation or coercion; and

"(6) the term 'organized crime' means criminal activity by two or more persons who are engaged in a continuing enterprise for the purpose of obtaining monetary or commercial gains or profits wholely or in part through racketeering activity.".

I

96TH CONGRESS
2D SESSION

H. R. 7055

To amend the Freedom of Information Act.

IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 1980

Mr. PREYER introduced the following bill; which was referred jointly to the Committee on Government Operations and the Permanent Select Committee on Intelligence

---

A BILL

To amend the Freedom of Information Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 552(b) of title 5, United States Code, is amended—

(1) by striking out "or" at the end of paragraph (8);

(2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new paragraph:

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"(10) obtained, under an express promise of confidentiality, by the Central Intelligence Agency either (A) from a secret intelligence source, or (B) from a foreign intelligence service.".

I

96TH CONGRESS
2D SESSION

H. R. 7056

To amend the Freedom of Information Act.

IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 1980

Mr. PREYER (by request) introduced the following bill; which was referred jointly to the Committee on Government Operations and the Permanent Select Committee on Intelligence

---

A BILL

To amend the Freedom of Information Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 552(b) of title 5, United States Code, is amended—

(1) by striking out "or" at the end of paragraph (8);

(2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; or "; and

(3) by adding at the end thereof the following new paragraph:

"(10) information certified by the Director of Central Intelligence or a designee to be: (A) intelligence obtained from a person, entity or organization other than a person employed by the United States Government; (B) information which identifies or tends to identify a source or potential source of information or assistance to an intelligence agency; or (C) information concerning the design, function, deployment, exploitation or utilization of scientific or technical systems for the collection of intelligence, but not including any research programs which involve experimentation with or risk to the health or safety of human beings. In each such instance the certification shall be conclusive and not subject to any judicial review. This certification may not apply to information responsive to requests by United States citizens or permanent resident aliens for information concerning themselves. In the case of information in the files of the Federal Bureau of Investigation the certification shall be made by the Director of the Federal Bureau of Investigation or a designee.".

Mr. PREYER. We are happy to have Mr. Carlucci here today as our witness, and he is accompanied by Mr. Mayerfeld, Mr. Chase, and Mr. Cowan.

If there are no further comments at this time, we will recognize you, Mr. Carlucci. I believe you have a statement you would like to read to the subcommittee at this time.

Mr. WEISS. Mr. Chairman, will the witnesses be sworn, as is our practice?

Mr. PREYER. I think our practice has been, where it is a legislative hearing, that we do not ordinarily swear the witnesses; if it involves a factfinding situation, we do. So, I do not think ordinarily we would swear the witnesses under these circumstances.

Mr. WEISS. I wonder, with your permission, if I may make a very brief opening statement?

Mr. PREYER. Surely.

Mr. WEISS. Thank you.

Mr. Chairman, I, too, welcome today's hearing on the proposed amendments to the Freedom of Information Act and express the hope that this is only the first in a series of hearings enabling us to examine the many components of this issue that lie at the heart of our open, democratic system of government.

The establishment of the FOIA was a monumental step toward guaranteeing our Nation's commitment to civil and constitutional liberties and allowing the public access to Government documents, information, and activities which their tax dollars fund and which, as citizens in an open society, they should be permitted to obtain. Through the FOIA, we have learned that certain Government agencies have, indeed, acted outside the bounds of their authority.

We know, for example, that our intelligence agencies have gone far beyond their legitimate function of gathering intelligence.

As we are being asked to consider exempting the CIA from disclosing this and other information, let us not forget some of what the FOIA has enabled the public to learn: that the CIA was conducting drug experiments on individuals without their consent; that the CIA had undertaken a program of secret recruitment on college campuses; that the CIA was infiltrating nonviolent political groups within the United States—clearly outside the bounds of its mandate to gather intelligence only in foreign countries; and that the CIA attempted to suppress the Glomar Explorer story, among others.

I thank you, Mr. Chairman.

Mr. PREYER. Thank you.

Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman.

I would like to join with Chairman Preyer in welcoming Deputy Director Carlucci here today. Mr. Carlucci has won high marks for his performance as an administrator in the various positions he has held in Government.

The subject of CIA compliance with the Freedom of Information Act has been one of continuing congressional interest in recent years. The problems the CIA faces in its administration of the act are particularly difficult because of the unusually sensitive nature of this Government Agency's work.

The principle that the public has a right to know about the work of its Government is most severely strained when applied to an agency whose function often requires absolute secrecy. For example, the ideal of public disclosure of Government activities runs entirely counter to the security principle of "need to know" that is applied to CIA files.

This dilemma makes it important that we strike a proper balance between desirable public access to CIA-held information, effective congressional oversight, and legitimate intelligence-gathering efforts. Because of the application of the Freedom of Information Act to the CIA, the Agency perceives problems with both the burden of compliance with the act and its ability to obtain needed intelligence information. As we begin this first in a series of hearings, I am anxious to learn about the CIA's difficulties with the Freedom of Information Act. I am hopeful that this effort will help us fashion a permanent solution and carefully balance public access to the information with valid national security interests.

Thank you, Mr. Chairman.

Mr. PREYER. Thank you.

Without objection, we will insert in the record at this point, a copy of the proposed amendment submitted by the Central Intelligence Agency.

[The material follows:]

A BILL

To insure that the Director of Central Intelligence shall be able to carry out his statutory responsibility to protect intelligence sources and methods from unauthorized disclosure.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that it is the purpose of this Act to insure that the Director of Central Intelligence shall be able to carry out his statutory responsibility to protect intelligence sources and methods from unauthorized disclosure.

Paragraph 403g of Title 50 of the United States Code is amended to read as follows:

"In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of Section 403(d)(3) of this title that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of any law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or number of personnel employed by the Agency. In furtherance of the responsibilty of the Director of Central Intelligence to protect intelligence sources and methods, information in files maintained by an intelligence agency or

component of the United States Government shall also be exempted from the provisions of any law which require the publication or disclosure, or the search or review in connection therewith, if such files have been specifically designated by the Director of Central Intelligence to be concerned with: The design, function, deployment, exploitation or utilization of scientific or technical systems for the collection of foreign intelligence or counterintelligence information; Special activities and foreign intelligence or counterintelligence operations; Investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources; Intelligence and security liaison arrangements or information exchanges with foreign governments or their intelligence or security services; Provided, that requests by American citizens and permanent resident aliens for information concerning themselves, made pursuant to Sections 552 and 552a of Title 5, shall be processed in accordance with those Sections. The provisions of this Section shall not be superseded except by a provision of law which is enacted after the date of this Amendment and which specifically repeals or modifies the provisions of this Section."

AMENDMENT TO SECTION 6 OF THE CIA ACT OF 1949
50 U.S.C. 403g

SECTIONAL ANALYSIS AND EXPLANATION

The draft bill amending the CIA Act of 1949 would result in the exclusion from search, review, and release, in connection with Freedom of Information Act requests, the information contained in sensitive intelligence files designated by the Director of Central Intelligence.

Current Freedom of Information law requires detailed review of all the information contained in these files with a view towards release. Although existing exemptions in the Freedom of Information Act may be employed to deny release of much of the information requested, the perception among those who provide foreign intelligence information is that the United States cannot guarantee protection of that information. This has resulted in increased reluctance on the part of intelligence sources to be forthcoming with information and to cooperate fully, because of fear that their identities and the information they provide could become public knowledge.

This amendment would permit the Director of Central Intelligence to insure that the most sensitive categories of intelligence information will not be subject to the FOIA process. However, the amendment would permit the continued review and release of finished foreign intelligence information when such information can properly be declassified. Also, the amendment would leave unaffected the handling of requests made under the Freedom of Information Act or the Privacy Act by United States citizens or permanent resident aliens for information on themselves.

AMENDMENT TO SECTION 6 OF THE
CIA ACT OF 1949

CHANGES IN EXISTING LAW
50 U.S.C. 403g

Changes in existing law are shown as follows: existing law in which no change is proposed is shown in roman; existing law proposed to be omitted is enclosed in brackets; and new matter is underscored.

* * * * *

In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of Section 403(d)(3) of this title that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of [section 654 of Title 5, and the provisions of] any [other] law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency. In furtherance of the responsibility of the Director of Central Intelligence to protect intelligence sources and methods, information in files maintained by an intelligence agency or component of the United States Government shall also be exempted from the provisions of any law which require publication or disclosure, or search or review in connection therewith, if such files have been specifically designated by the Director of Central Intelligence to be concerned with: The design, function, deployment, exploitation or utilization of scientific or technical systems for the collection of foreign intelligence or counterintelligence information; Special activities and foreign intelligence or counterintelligence operations; Investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources; Intelligence and security liaison arrangements or information exchanges with foreign governments or their intelligence or security services; Provided that requests by American citizens and permanent resident aliens for information concerning themselves, made pursuant to Sections 552 and 552a of Title 5, shall be processed in accordance with those Sections. The provisions of this Section shall not be superseded except by a provision of law which is enacted after the date of this Amendment and which specifically repeals or modifies the provisions of this Section. [Provided, That in furtherance of this section, the Director of the Bureau of the Budget shall make no reports to the Congress in connection with the Agency under section 947(b) of Title 5.]

Mr. PREYER. Mr. Carlucci?

STATEMENT OF FRANK C. CARLUCCI, DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE, CENTRAL INTELLIGENCE AGENCY, WASHINGTON, D.C.; ACCOMPANIED BY MARK D. COWAN, ASSISTANT LEGISLATIVE COUNSEL; ERNEST MAYERFELD, ASSOCIATE GENERAL COUNSEL; GEORGE OWENS, CHIEF, INFORMATION PRIVACY DIVISION; AND MAURICE SOVERN, CHIEF, FREEDOM, PRIVACY LITIGATION GROUP

Mr. CARLUCCI. Thank you, Mr. Chairman and members of the subcommittee.

I am pleased to appear before you today to discuss the serious impact that the Freedom of Information Act is having on the mission and functions of the Central Intelligence Agency. I intend to be as detailed as possible in this public session.

As you are aware, I testified on this subject in April of last year before the House Permanent Select Committee on Intelligence Subcommittee on Legislation. What I have to say is not a new story. I will make no new and dramatic revelations today. The tale I will tell is one which has been told before and which I will continue to retell to the Congress until such time as we are granted the required relief from this act.

Since last April we have witnessed the growth of a broad-based congressional recognition of the intelligence community's need for relief from the most damaging aspects of the current law. Congressman Robert McClory of Illinois first introduced H.R. 5129, which contains language which is all but identical to that which I proposed last April. More recently, Senators Moynihan and Jackson with others have introduced S. 2216, the "Intelligence Reform Act of 1980." This omnibus piece of legislation adequately addresses our concern with the Freedom of Information Act as well as providing relief to other critical areas of intelligence concern. Representative C. W. "Bill" Young of Florida has introduced H.R. 6316, the House counterpart of Mr. Moynihan's bill. The recently proposed intelligence charter, of course, contains language which would provide relief in this area.

My appearance before you today is another indication of serious concern by the Congress over our problems with the FOIA. It is one to which I attach a great importance.

I would, however, like to point out that I still face a dilemma in appearing before you today on this subject, just as I did a year ago when I appeared before the House Permanent Select Committee on Intelligence. As my remarks will make clear, we have serious problems in our country in keeping the authorized and legitimate intelligence activities secret. The harmful effects of the Freedom of Information Act are without question genuine, but the problem can best be examined as a matter of perception.

My testimony today will be used by the Soviet KGB and other hostile foreign intelligence services to convince potential sources of information that cooperation with the United States is a foolhardy endeavor because such cooperation is bound to become public. Even so,

I firmly believe that my appearance in open session can counteract such attempts, if the end result is legislation which safeguards the capability of our Agency and its officers to convincingly offer the protection from public disclosure which people who, in aiding our country and placing their life or liberty in jeopardy, rightly demand.

I also want to reiterate today that Admiral Turner and I continue to support the general concept of openness in government. Under Admiral Turner's leadership, over 150 finished intelligence reports per year are made available to the public. We have moved away from routine "no comment" answers, and we are now as responsive as possible to media inquiries.

As you may be aware, we also continue to conduct a dialog with American academic specialists. In addition, CIA analytical personnel increasingly participate in the public presentation of unclassified professional papers. In this latter instance, the substantive product of CIA is made available, thus contributing to an informed public without risking the disclosure of sensitive intelligence sources and methods.

We also support the right of the American citizen to have access to the affairs of his Government and to be assured that information on him, which is gathered by his Government, is accurate and will not be abused. Our proposal for legislative relief from the FOIA recognizes this right.

What we do question seriously and thoughtfully, however, is the appropriateness of applying Government-wide public disclosure concepts to those legitimate activities of the Central Intelligence Agency which necessitate secrecy. It is my firm belief that the American public recognizes and strongly supports the need for their intelligence service to hold inviolate those secrets entrusted to their keeping. I also believe that it was not the intent of Congress to make available for search, review, and possible release that operational information. The Congress, in fact, has reaffirmed the uniqueness of our mission and the information derived from it by creating special oversight committees in both Houses of Congress. As a result, there now exist more effective congressional oversight mechanisms to assure the accountability, legality, and propriety of CIA activities which must remain secret.

Admiral Turner and I, as congressionally approved Presidential appointees, insure that these committees are now and will continue to be supplied with whatever information they need in order that the Congress may be satisfied that the Central Intelligence Agency is conducting its activities within the law.

It is, I submit, through these committees, as well as the extensive executive branch review mechanisms, not through 23,000 foreign and American FOIA requesters, that oversight of this Nation's most sensitive activities must be undertaken.

While it is for the people, through their elected Representative in Congress, to decide whether the best interests of the Nation are served by the application of general openness concepts to intelligence activities, it is our position that the best interests of the Nation are not so served. My theme today, therefore, is that the current application to the CIA of public disclosure statutes like the Freedom of Information Act seriously damage the Agency's ability to do its job.

Before I provide more details, I must make one point. Under the current Freedom of Information Act, national security exemptions do exist to protect the most vital intelligence information. The key point, however, is that those sources upon whom we depend for that information have an entirely different perception. Admittedly, this perception arises from more than the FOIA. There have, for example, been leaks. There have been cases of espionage; former Agency employees have written books without proper clearance beforehand; and Philip Agee and others continue to publish a monthly bulletin—"The Covert Action Information Bulletin"—dedicated to exposing our employees under cover and our operations overseas. We are currently seeking remedies to all of these problems.

The Freedom of Information Act, however, has emerged as a focal point of the often-heard allegation that the CIA cannot keep a secret, that is, cannot properly protect its information from public disclosure. It has, therefore, assumed a larger than life role as a symbol of this Nation's difficulty in keeping confidences inviolate. The perception held by those who would only enter into arrangements with us on a confidential basis is something we cannot ignore.

In order to appreciate the FOIA's impact on intelligence, it is important to clearly understand how we operate.

For instance, it is a misconception that our people spend most of their time moving around trying to pick up information in bars and photographing documents with secret cameras. The "cloak-and-dagger" image is grossly unfair and misleading. Their actual mission is to establish what is essentially a secret contractual relationship with people in key positions with access to information that might otherwise be inaccessible to the U.S. Government.

This is not an easy task, nor is it quickly accomplished. The principal ingredient in these relationships is trust. To build a clandestine relationship, which in many cases entails an individual's putting his life and the safety of his family in jeopardy to furnish information to the U.S. Government, is a delicate and time-consuming task. Often it takes years to convince an individual that we can protect him. Even then, the slightest problem, particularly a breach or perceived breach of trust, can permanently disrupt the relationship.

One must recognize also that most of those who provide us with our most valuable and therefore most sensitive information come from societies where secrecy in both government and everyday life prevails. In these societies, individuals suspected of anything less than total allegiance to the ruling party or clique may be summarily dismissed from their jobs, incarcerated, or even executed. In societies such as these, the concepts behind the Freedom of Information Act are totally alien, frightening, and indeed contrary to all that they know. It is virtually impossible for most of our agents and sources in such societies to understand the law itself, much less why an organization such as the Central Intelligence Agency, wherein reposes their identities and the information they have provided, should be subject to the act.

We constantly witness sensational news articles describing CIA information obtained under FOIA. It is difficult, therefore, to convince one who is secretly cooperating with us that someday he will not

awaken to find in a U.S. newspaper or magazine information which he has furnished to the Agency which can be traced back to that person.

Also, imagine the shackles being placed on the CIA officer trying to convince the foreign source to cooperate with the United States. The source, who may be leaning toward cooperation, will demand that his information be protected. He wants absolute assurance that nothing will be given out which could conceivably lead to his own increasingly sophisticated counterintelligence service to appear at his doorstep. But the barrage of intelligence disclosures are, Mr. Chairman, making it harder and harder for our officers to convince potential sources that their cooperation can be kept secret.

Although we assure these individuals that their information is and will continue to be well protected, we have on record numerous cases where our assurances have not sufficed. Foreign agents, some very important, have either refused to accept or have terminated a relationship on the grounds that, in their minds—and it is unimportant whether they are right or not—but in their minds the CIA is no longer able to absolutely guarantee that information which they provide the U.S. Government is sacrosanct. Again, we believe we can keep it so, but it is. in the final analysis, their perception—not ours—which counts.

For example, a senior foreign official who for 2 years had provided sensitive information on military and political affairs asked that the clandestine payments to him be discontinued. The Agency's inability to protect secrets because of the Freedom of Information Act and books written by former Agency officers were cited as reasons for discontinuing his paid agent role.

In another case, a source who had for 3 years been cooperative and productive on international economic activity in 1978 strongly expressed his growing concern of media disclosures of CIA intelligence activities. This source's concern led to diminished contact with him and finally resulted in discontinuance of the relationship entirely.

There are other instances where agents have cited the FOIA as the reason for unwillingness to either cooperate initially, continue to cooperate, or cooperate as fully as in the past. How many cases of refusal to cooperate where no reason is given but if known would be for similar reasons, I cannot say. I submit, however, that based upon the numerous cases of which we are aware, there are many more cases of sources who have discontinued a relationship or reduced their information flow based on their fear of disclosure. No one can quantify how much information vital to the national security of the United States has been or will be lost as a result.

The FOIA also has had a negative effect on our relationships with foreign intelligence services. As I noted in my testimony last April. the chief of a major foreign intelligence service sat in my office and flatly stated that he could no longer fully cooperate as long as the CIA is subject to the Freedom of Information Act.

Likewise, a major foreign intelligence service dispatched to Washington a high ranking official for the specific purpose of registering concern over the impact of the FOIA on our relationship. I strongly argued that we had adequate national security exemptions. While admitting awareness of these exemptions, this representative correctly

noted that even information denied under the exemptions was subject to later review and possible release by a U.S. court.

While this had not yet happened when I last testified, a U.S. district court judge in an FOIA case has recently ordered the release of CIA classified information. The disclosure of such information will compromise several extremely sensitive intelligence sources. The court has, in effect, second guessed the professional judgment of the Director of Central Intelligence. We hope to reverse this outcome on appeal. But we cannot guarantee the outcome of this appeal or any future case.

Since my testimony last April, other senior representatives of several cooperating foreign intelligence services have expressed to me a similar sense of dismay over our seeming inability to effectuate relief from the most damaging provisions of the FOIA. Our stations overseas continue to report increasing consternation over what is seen as an inability to keep information entrusted to us secret. The unanswerable question is: How many other services are now more careful as to what information they pass to the United States?

Finally, it is not only foreign sources of intelligence information that feel threatened by the FOIA's applicability to the Central Intelligence Agency. The FOIA has impacted adversely on our domestic contacts as well. As the subcommittee is well aware, patriotic Americans volunteer information which is invaluable to the U.S. Government. Most of these Americans, for business and other reasons, insist that we protect the fact of their cooperation and the information which they provide.

Despite the universal concern over FOIA, most Americans continue to help us. But there are those who, in assessing the risk of disclosure, determine that it is not in their best interest to cooperate. They find their sense of patriotism frustrated by an obligation that their private interests not be jeopardized.

For example, the head of a large American company and former Cabinet member told me that he thought any company was out of its mind to cooperate with CIA as long as the provisions of FOIA apply to it. I think he is absolutely wrong, but again it is in the final analysis his perception, not ours, that counts. Unfortunately, he is not alone.

A recent approach made to a U.S. businessman with good access to foreign military information was initially rejected. The potential source interrogated the CIA officer at length, asked about disclosure policies, the FOIA and its requirements, CIA responsibilities under disclosure statutes, guarantees that CIA could really protect his information from disclosure, the effects of release by CIA of information to Congress, and the ability, under the FOIA or otherwise, of his competitors to uncover information passed to CIA by his company. An agreement was finally reached where CIA was given limited access to one person, restricted to one very narrow area of information. We are convinced that this man's fear of disclosure caused this severe limitation on what might otherwise have been a considerable flow of important intelligence information.

Over the past few years this dilemma has prompted other important U.S. sources of information to discontinue their cooperation with U.S. intelligence.

The FOIA is a principal symbol of the problem. These examples demonstrate the harmful effect of the Freedom of Information Act on our ability to collect intelligence.

Mr. Chairman, we are expected to provide the best possible information to U.S. policymakers and to Congress. We are and will continue to be seriously hampered in achieving this objective unless we can give more certain guarantees to our sources that their relationship with CIA and the information which they provide will be held inviolate.

While the vast majority of CIA information is properly secret, efforts to excise these secrets from documents in response to FOIA requests produces fragmented information which is often out of context and therefore misleading. Often such fragmentary information released under FOIA has been embellished with conjecture to sensational but misleading or fallacious stories.

For example, a previous release under FOIA of CIA information regarding the late Dr. Thomas Dooley was recently seized by the world press as positive proof that Dr. Dooley was a CIA agent. This is not the truth. But the perception of those who read the numerous speculations in the press cannot be easily changed, and it undoubtedly had a chilling effect on individuals who are indeed cooperating. They may now be asking themselves when their names will be released.

Turning again to the foreign side of matters, it is also probable that a sophisticated foreign intelligence service could piece together, from bits and pieces of released information in one or another area, a larger portion of the entire picture regarding a particular intelligence activity or operation. It is then likely that foreign intelligence services could, by analyzing information released under the FOIA, uncover U.S. intelligence needs, requirements, and tasking as they relate to their country.

Mr. Chairman, my presentation to you would be incomplete if I left you with the impression that the sole problem created by the subjection of our records to the FOIA was one of perception. FOIA processing is, of course, carried out by human beings. This raises the possibility of human error and of faulty judgment as to what may and what may not be released in one or another situation. Mistakes, although few and far between, have been made and will, I fear, continue to occur no matter how much care we exert in processing requests.

Additionally, and perhaps more importantly, FOIA requests break down the CIA's system of compartmented records. Our compartmented record system allows only those with a genuine need to know to have access to one or another file or even individual document. Under an FOIA request all records and files relevant to the particular request are drawn together. They remain together during the FOIA request, appeal, and litigation process, thus giving them far wider distribution than they would normally have and than is consistent with even minimally acceptable security practice. Thus we find the anomaly that FOIA is given a rank of importance higher than the need-to-know principle which is the underpinning of our information security system.

Mr. Chairman, thus far I have spoken to some of the operationally related problems which we as an agency face in our attempt to comply with both the letter and intent of the law while, at the same time,

insuring our sources that we will not release information provided us in confidence.

Before closing, however, I would like to discuss some of the increasing administrative burdens we face in endeavoring to comply with the act.

In this regard, it is no surprise that the Agency is unable to meet the congressionally imposed time limits of the Freedom of Information Act and could, at any time, be found to be in violation of the act. For example, with a current backlog of 2,700 information requests, we must rely on the accepted judicial doctrine that we are exercising "due diligence" in processing the requests on a first-received-first-answered basis and that the delay results from "exceptional circumstances," that is, a substantial backlog. We argue, therefore, that the courts should grant the Agency more time than that allowed under the act's provisions.

However, as I noted earlier, Federal courts are beginning to become more impatient with this doctrine. For example, a district court, recognizing that it is forced to respond to the newly imposed requirements of the Speedy Trial Act, has now turned to us and ordered us to complete our work on a 50,000-page case in 4 months. In reaching this conclusion, the Federal judge stated, and I quote:

> **There are two ways to deal with this problem. If the Agencies cannot comply within the limits of their budget, they should ask the Congress for additional funds. Alternatively, they should ask that the statute be amended. But as long as the law exists it will be the duty of this court to carry it out, to carry it out just as we carry out the Speedy Trial Act.**

As the judge suggested, today I am bringing this problem to you. But I submit to you that additional funds will not solve our problems. To hire 200 people to take care of our backlog would only increase the danger that sensitive information would be released. Given the nature of our file systems and given the fact that the review of information requested under the FOIA can only be efficiently and securely accomplished by individuals knowledgeable in the material they are reviewing, hiring more would not solve the problem. And to speed up the process in an attempt to meet the congressionally imposed time limits will only divert our people from doing those jobs they are meant to do: To collect, analyze, and produce intelligence.

Further, with regard to the administrative burden, Mr. Chairman, I offer the following:

In spite of the diversion of increased manpower, coupled with efforts to improve our efficiency and productivity, we continue to receive a heavier volume of FOIA and Privacy Act requests than we can handle. In this regard, we have received over the past 5 years an average of 4,744 FOIA, Privacy Act, and Executive Order 12065 requests per year or about 18 per day. Our current backlog is over 2,700 unanswered requests, and this figure is increasing.

We have many different decentralized record systems, which may have to be searched in order to respond to a particular FOIA request. These divergent record systems, as I noted earlier, must be separately maintained because of the compartmented security system which we find essential. These record systems are maintained to meet the needs of

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our mission. This system does, however, create its own special problems in meeting FOIA time restrictions.

A tremendous amount of internal coordination of information is required because of our compartmented record system. Naturally, we must also constantly coordinate information with other Government agencies, departments, and committees of the Congress to assure that we fully protect classified data entrusted to our care and that we do not release information obtained from another agency for which that agency might have a legitimate basis for withholding. This further compounds the problem in meeting the time constraints imposed by FOIA.

The average cost of processing requests amounts to about $900 each. In return, we have collected an average of $2 per request.

Many requests are sent to us via a form letter. For example, requests received from universities often follow this pattern and generally speaking are extremely broad, asking for "all information CIA has on relationships between CIA and the university and CIA and university staff or officials."

Other requests are of the curiosity variety. To most of these we are able to provide only a limited number of documents but must, nonetheless, expend many fruitless man-hours in arriving at that conclusion.

Many others are from foreigners—possibly representatives of hostile intelligence services and clearly some from those whose apparent purpose in writing is to uncover information which would do harm to this Nation's interests overseas.

A number are from individual authors. In one case, we have devoted the total efforts of one person full time for a period of 17 months. This again is for a single request by one individual.

In another area, we have already expended over 4 man-years on FOIA requests from Philip Agee who is an admitted adversary of the CIA, dedicated to exposing the identities of our officers serving undercover. It is disgraceful that we are required to assist him in his endeavors.

Often requests are for information on U.S. personalities on whom we are unlikely to hold information. We must, however, search extensively only to conclude we have no information.

We frequently receive requests which are broad-gaged fishing expeditions asking for information on a large variety of topics unrelated to foreign intelligence. It is surprising to us how many requesters apparently believe we have an all-inclusive record system.

As noted earlier, a major concern is that the release of inaccurate unevaluated intelligence which is out of context is seriously misleading to the public.

Because of the nature of the information we must review, it is imperative to use professional intelligence officers to make judgments on the releases of material. This, of course, drains resources from their prime intelligence functions. Additional funding so that we could hire more individuals to contend with FOIA would not begin to solve the problem.

For example, when we receive a request for information concerning, say, Afghanistan, in the final analysis a professional intelligence officer, a senior intelligence officer familiar with Afghanistan's affairs,

must carefully review the information destined for release or possible release. He must determine, indeed he must be ready to swear to the fact, that on the one hand, we are releasing all that we can and on the other hand that in so certifying we are not inadvertently releasing information damaging to the national security or our sources overseas. The point is that the time spent in each case utilizes time which would otherwise be utilized in the conduct of our headquarters support to intelligence operations overseas.

Judge Aubrey Robinson in a hearing on an FOIA case recently made some pertinent comments. I quote:

> It is like trying to run a business and have an audit at the same time. * * * Everybody who wants to write a newspaper article, everybody who has had an argument over the dinner table with his wife, everybody who wants to write a book, everybody who goes to jail and doesn't have anything else to do starts filing Freedom of Information Act requests. If the public knew, if Congress ever costed out this thing, I think they would take another look at it.

In this regard, since implementation of the amended FOIA, we have expended an average of 100 man-years per year working on requests for information under the disclosure statutes. This expenditure of valuable human resources is greater than that spent on any one of several areas of key intelligence interest to the United States. I question if this is the priority Congress intends.

We have also found an increase in appeals and litigation cases resulting from our inability to respond to FOIA requests according to the time provisions of the FOIA as I noted earlier. This tends to delay our initial processing of cases because of court-imposed deadlines which must necessarily receive our first priority.

Even when the Agency diverts this much personnel time to comply with the present statute, there still exists the very real possibility that an orchestrated effort by persons hostile to the Agency could literally swamp the Agency with FOIA requests. Pursuing the entitlement which any person in the world now has under the law, those persons could perfectly legally make unlimited requests and follow up with litigation. Quite effectively—and entirely within the U.S. legal framework—they could sabotage the normal mission of the Agency.

Thus, the administrative burden of the FOIA is also a serious problem for us which, when coupled with the more serious problems I described earlier, makes relief a matter of urgency. A remedy is difficult to fashion, and we have given it a lot of thought.

We do not seek a total exemption from FOIA. What we do seek is a more effective way to insure our sources that we are doing what the 1949 CIA Enabling Act directs us to do, that is, protect them. We think we have achieved this objective, at least partially, by perfecting the relevant CIA Act provisions in a manner fully consistent with the spirit and letter of national security exemptions already in the Freedom of Information Act. At the same time, we are also conscious of the competing concerns of U.S. citizens whose support and confidence we must maintain. It is for this reason that we have constructed our amendment in such a manner as to keep all of our files accessible to American citizens and permanent resident aliens requesting information on themselves, subject to existing FOIA exemptions.

The amendment to the CIA Act of 1949 permits the Director of Central Intelligence to designate certain files as exempt from the provi-

sions of laws which would require the publication or disclosure, or search and review of those files.

Those four categories of files, as listed in the amendment, contain the most sensitive intelligence information of this Nation. It is these files which contain the names of our sources of information. These files do not, however, contain the finished intelligence product of CIA which would remain subject to requests under the FOIA.

I have with me today officers who regularly work with the FOIA, who will be happy at the conclusion of my testimony to explain in more detail the salient features of the amendment.

It is of particular significance, you should note, that the type of material which our proposed amendment seeks to exempt from search and access is precisely that type of information which we have been able to withhold in the past with the blessings of the courts. Nevertheless, requests for this type of information continue to be received, searches must be conducted to locate the material, documents must be reviewed, and the result is inevitably the same—most of the material must be denied.

Thus, under the proposed revision of the Central Intelligence Agency Act, the public will continue to receive essentially the same information it receives today under the FOIA. Hopefully, by the elimination of the administrative burden occasioned by the obligation to process requests for information which predictably cannot be released, the processing of requests for information which may be released can be expedited.

I have now been Deputy Director for Central Intelligence for almost 2 years and was earlier associated with intelligence for a number of years as a foreign service officer. I tell you in all candor that the erosion of our ability to protect our sources and methods and, more importantly, the larger than life perception of that erosion is the most serious problem the CIA faces today and indeed a serious problem for the Nation. If we do not solve it, we cannot continue to be the best intelligence organization in the world.

As President Carter stated on October 1 of last year:

> We must increase our efforts to guard against damage to our crucial intelligence sources and our methods of collection, without impairing civil and constitutional rights.

Mr. Chairman, members of the subcommittee, if we believe we need quality intelligence then we have to accept a large measure of secrecy. FOIA has called into question around the world our ability to keep a secret. Its application in its current form to CIA is inappropriate, harmful, and unnecessary in light of current oversight mechanisms. Relief from FOIA is a key step that must be taken in the revitalization of this Nation's intelligence capability.

Mr. Chairman, that concludes my prepared statement. I am ready to take the subcommittee's questions.

Mr. PREYER. Thank you very much, Mr. Carlucci.

The CIA, I guess, has always been the victim of perceptions around the world so that if there is a mudslide that ruins the farmer's field in Italy it is always blamed on the CIA, no matter what the cause. You are telling us now that the Freedom of Information Act is getting to be a victim of the same sort of misconception.

As I understand it, you are telling us that the national security exemptions under the Freedom of Information Act do work to protect the most vital information, but the point you make is that it is not perceived by others to be working that way, and therefore it brings in its train a lot of consequences.

While your proposed solution is not a total exemption of the CIA from the Freedom of Information Act, it is a pretty sweeping exemption. Is the position of the CIA regarding the Freedom of Information Act exemption shared by the administration? In other words, is the position you are outlining to us today an administration position on this?

Mr. CARLUCCI. Mr. Chairman, if I may, I will address your first point first—the question of perception. As I indicated in my testimony, perception is at the heart of the problem, but it is not the only problem. I did indicate that in processing requests there is always the possibility for human error, particularly with such a large volume of requests. I also indicated that partial release of information can produce misleading results to the public. Third, I indicated that we cannot go beyond the initial request. We do not know what other information the requester holds. Hence, for a good counterintelligence operation, a seemingly innocuous piece of information being released could provide the final piece to the puzzle.

Fourth, there is the problem to which I referred of judicial review where the judge can go beyond our classification and determine whether that classification is valid.

All of this contributes to our perception problem, of course. It is very difficult for us to convince somebody, say, in a Communist country that their information can be fully protected when we have all of these possibilities facing us.

Frankly, Mr. Chairman, I would not characterize the exemption we are requesting as a sweeping exemption. We think we are leaving great latitude for FOIA requests. We are leaving all our finished products subject to the FOIA process, and that, after all, is the intelligence information which contributes most to an informed public debate. Moreover, we would leave subject to the FOIA process first-person requests which represent over 50 percent of our requests.

As to the question of views within the administration, the National Security Agency's support of our position, the Department of Justice have indicated that they have some questions which have yet to be resolved; the Office of Management and Budget reviewed my testimony and said that we could indicate that my testimony is not in conflict with the President's program.

Mr. PREYER. Thank you, Mr. Carlucci.

You mentioned the finished intelligence reports, and I think you stated that under Admiral Turner's leadership over 150 of those have been made available. Would it be fair to say that the finished intelligence reports are normally produced by the intelligence analysis side of CIA and that the proposed amendment would really deal with the blanket exemption for the CIA's Directorate of Operations, that is, the so-called "dirty tricks" side, and that the finished intelligence is really giving us the analysis side rather than the operation side?

Mr. CARLUCCI. It is correct that most of the finished intelligence is produced by the analytical side. Mr. Chairman, if you would agree, I would be prepared to submit for the record a listing of unclassified publications that we have available. Some of them are quite profound pieces, such as, "Soviet and U.S. Defense Activities," "International Energy Review," "Economic Indicators"; I have such a list which I would be prepared to submit for the record.

Mr. PREYER. Without objection, it will be included in the record at this point.

[The material follows:]

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	SR 80-100005	Soviet and US Defense Activities 1970-79: A Dollar Cost Comparison	Jan 1980
PB 80-928501	ER EI 80-001	Economic Indicators Weekly Review	Jan 1980
PB 80-928502	ER EI 80-002	Economic Indicators Weekly Review	Jan 1980
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E/279-016	ER 79-10624	Energy Supplies in Eastern Europe: A Statistical Compilation 75 pgs	Dec 1979
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E/284-012	CR CS 79-012	Chiefs of State and Cabinet Members of Foreign Governments	Dec 1979

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E/285-035	ER EI 79-035	Economic Indicators Weekly Review	Aug 1979
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E/286-011	ER IESR 79-011	International Energy Statistical Review	Aug 1979
E/281-014	CR 79-14399	The Soviet Leadership Since Stalin: CPSU Politburo and Secretariat, 1952-1979 (Wall Chart) 14 pgs	Aug 1979
E/280-013	ER 79-10274	Handbook of Economic Statistics 1979 268 pgs*	Aug 1979
E/284-008	CR CS 79-008	Chiefs of State and Cabinet Members of Foreign Governments	Aug 1979
E/281-015	CR 79-10123	Evolution of the Central Administrative Structure of the USSR 1917-1979 (Wall Chart)	Aug 1979
E/279-010	CR 79-11244	Yugoslavia Government Structure (Wall Chart) 7 pgs	Aug 1979
E/279-009	CR 79-11245	Structure of the League of Communists of Yugoslavia (LCY) (Wall Chart)	Aug 1979
E/279-005	CR 79-14078	Directory of Officials of The Polish People's Republic 264 pgs	Aug 1979
E/282-012	CR 79-14074	Chinese Communist Party Organizations 11 pgs	Aug 1979

NTISUB Number	Document Number	Publication Title	Pub Date
E/280-010	ER 79-10327U	The World Oil Market in the Years Ahead 91 pgs*	Aug 1979
E/285-027	ER EI 79-027	Economic Indicators Weekly Review	Jul 1979
E/285-028	ER EI 79-028	Economic Indicators Weekly Review	Jul 1979
E/285-029	ER EI 79-029	Economic Indicators Weekly Review	Jul 1979
E/285-030	ER EI 79-030	Economic Indicators Weekly Review	Jul 1979
E/286-008	ER IESR 79-008	International Energy Statistical Review	Jul 1979
E/286-009	ER IESR 79-009	International Energy Statistical Review	Jul 1979
E/281-013	CR 79-13337	Appearances of Soviet Leaders January-December 1978 253 pgs	Jul 1979
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E/284-006	CR CS 79-006	Chiefs of State and Cabinet Members of Foreign Governments 130 pgs	Jun 1979
E/281-011	ER 79-10276	Soviet Strategy and Tactics in Commercial Negotiations with the US 19 pgs	June 1979

NTISUB Number	Document Number	Publication Title	Pub Date
E/282-009	CR 79-12264	Appearances & Activities of Leading Chinese Officials During 1978 1043 pgs	May 1979
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E/279-006	CR 79-10822	Lao People's Democratic Republic Party and Government Structure (Wall Chart)	May 1979
E/279-006	CR 79-12092	CPSU Politburo and Secretariat: Positions and Responsibilities (Wall Chart) 4 pgs	May 1979
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E/286-005	ER IESR 79-005	International Energy Statistical Review	May 1979
E/286-006	ER IESR 79-005	International Energy Statistical Review	May 1979
E/285-018	ER EI 79-018	Economic Indicators Weekly Review	May 1979
E/285-019	ER EI 79-019	Economic Indicators Weekly Review	May 1979
E/285-020	ER EI 79-020	Economic Indicators Weekly Review	May 1979
E/285-021	ER EI 79-021	Economic Indicators Weekly Review	May 1979
E/279-004	CR 79-11490	Directory of Officials of the Socialist Federal Republic of Yugoslavia 208 pgs	Apr 1979
E/279-003	RP 79-10162	Cuban Chronology 21 pgs	Apr 1979
E/282-005	ER 79-10206	China: Agriculture in 1978	Apr 1979

NTISUB Number	Document Number	Publication Title	Pub Date
E/286-004	ER IESR 79-004	International Energy Statistical Review	Apr 1979
E/285-014	ER EI 79-014	Economic Indicators Weekly Review	Apr 1979
E/285-015	ER EI 79-014	Economic Indicators Weekly Review	Apr 1979
E/285-016	ER EI 79-014	Economic Indicators Weekly Review	Apr 1979
E/285-017	ER EI 79-014	Economic Indicators Weekly Review	Apr 1979
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E/282-006	CR 79-11870	Directory of Chinese Scientific and Educational Officials 560 pgs	Apr 1979
E/284-003	CR CS 79-003	Chiefs of State and Cabinet Members of Foreign Governments	Mar 1979
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E/281-007	ER 79-10131	Simulations of Soviet Growth Options to 1985	Mar 1979
E/280-005	ER 79-10067	Recent Gains in Nonfuel Trade Between The Developing Nations 55 pgs	Mar 1979
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E/285-009	ER EI 79-009	Economic Indicators Weekly Review	Mar 1979

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E/285-010	ER EI 79-010	Economic Indicators Weekly Review	Mar 1979
E/285-011	ER EI 79-011	Economic Indicators Weekly Review	Mar 1979
E/285-012	ER EI 79-012	Economic Indicators Weekly Review	Mar 1979
E/285-013	ER EI 79-013	Economic Indicators Weekly Review	Mar 1979
E/285-005	ER EI 79-005	Economic Indicators Weekly Review	Feb 1979
E/285-006	ER EI 79-006	Economic Indicators Weekly Review	Feb 1979
E/285-007	ER EI 79-007	Economic Indicators Weekly Review	Feb 1979
E/285-008	ER EI 79-008	Economic Indicators Weekly Review	Feb 1979
E/285-002	ER IESR 79-002	International Energy Statistical Review	Feb 1979
E/284-002	CR CS 79-002	Chiefs of State and Cabinet Members of Foreign Governments	Feb 1979
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E/280-001	SI 79-10010	Foreign Development and Application of Automated Controls for the Steel Industry 21 pgs	Jan 1979
	GC BIF 79-001	National Basic Intelligence Factbook*	Jan 1979
	CR 79-10464	CPSU Central Committee: Executive and Administrative Apparatus	Jan 1979

NTISUB Number	Document Number	Publication Title	Pub Date
E/282-004	ER 79-10073	China: Demand for Foreign Grain	Jan 1979
	CR 79-10008	Directory of Officials of the Bulgarian People's Republic**	Jan 1979
	SR 79-10004	A Dollar Cost Comparison of Soviet and US Defense Activities, 1968-78**	Jan 1979
	ER EI 79-001	Economic Indicators Weekly Review	Jan 1979
	ER EI 79-002	Economic Indicators Weekly Review	Jan 1979
	ER EI 79-003	Economic Indicators Weekly Review	Jan 1979
	ER EI 79-004	Economic Indicators Weekly Review	Jan 1979
	ER IESR 79-001	International Energy Statistical Review	Jan 1979
E/279-001	CR 79-10001	Cuban Leadership (Wall Chart)	Jan 1979
E/279-002	CR 79-10002	Directory of Cuban Officials	Jan 1979
E/284-001	CR CS 79-001	Chiefs of State and Cabinet Members of Foreign Governments	Jan 1979
E/281-002	ER 79-10057	USSR: Long-Term Outlook for Grain Imports	Jan 1979

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January 1980

A. General Reference Maps of Foreign Countries

These multi-colored Central Intelligence Agency maps identify major roads, population density, major industries, the location of natural resources, and other specific features of the given country. Each map is wrapped in a sturdy envelope for protection.

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Chile. 1972. 24 x 22 in.	041-015-00020-9
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Guyana. 1975. 16 x 22 in.	041-015-00044-6
Honduras. 1973. 21 x 19 in.	041-015-00048-9
Hungary. 1978. 22 x 25 in.	041-015-00031-4
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India with Sikkim and Bhutan. 1978. 24 x 30 in.	041-015-00051-9
Indonesia. 1973. 30 x 22 in.	041-015-00027-6
Israel and Occupied Territories. 1978. 24 x 26 in.	041-015-00091-8
Italy. 1978. 26 x 20 in.	041-015-00056-0
Ivory Coast. 1972. 18 x 28 in.	041-015-00011-0
Jamaica. 1978. 18 x 21 in.	041-015-00093-4
Jordan. 1978. 26 x 30 in.	041-015-00026-8
Kenya. 1974. 20 x 18 in.	041-015-00065-9
Korea, North. 1972. 27 x 23 in.	041-015-00030-6
Korea, South. 1978. 20 x 26 in.	041-015-00053-5
Kuwait, Bahrain, Qatar, and United Arab Emirates. 1978. 21 x 30 in.	041-015-00009-8

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Lebanon. 1979. 22 x 26 in.	041-015-00101-9
Liberia. 1973. 16 x 23 in.	041-015-00057-8
Libya. 1974. 29 x 19 in.	041-015-00063-2
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Martinique, Guadeloupe and French Guinea. 1972. 15 x 23 in.	041-015-00014-4
Mauritius. 1972. 11 x 15 in.	041-015-00005-5
Mexico. 1978.	041-015-00100-1
Morocco. 1973. 18 x 29 in.	041-015-00036-5
Mozambique. 1973. 20 x 24 in.	041-015-00049-7
Namibia and Walvis Bay. 1978. 19 x 27 in.	041-015-00097-7
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Pakistan. 1973. 17 x 28 in.	041-015-00054-3
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Poland. Rev. 1977. 17 x 27 in.	041-015-00090-0
Portugal. 1972. 22 x 22 in.	041-015-00018-7
Rhodesia, South. 1979. 22 x 26 in.	041-015-00110-8
Saudi Arabia. 1979. 23 x 26 in.	041-015-00107-8
Senegal and Gambia. 1972. 20 x 24 in.	041-015-00023-3
Seychelles. 1978. 20 x 24 in.	041-015-00008-0
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Vietnam, South. 1972. 24 x 29 in.	041-015-00021-7
Yemen (Aden). 1973. 19 x 27 in.	041-015-00043-8
Yemen (San'a). 1973. 20 x 21 in.	041-015-00033-1
Yugoslavia. 1973. 17 x 27 in.	041-015-00035-7
Zaire. 1978. 18 x 30 in.	041-015-00032-2

B. Atlases and Publications

National Basic Intelligence Factbook. This is a compilation of basic data on political entities worldwide, and is coordinated and published Jan. and July by the Central Intelligence Agency.

S/N 041-015-00103-5

India Ocean Atlas. Issued by the Central Intelligence Agency, this colorful publication goes beyond the scope of a conventional atlas by providing a wide variety of economic, historical, and cultural data in addition to the usual geographic information. In the interest of simplicity and clarity, it employs a number of innovative graphic techniques as well as standard regional and thematic maps, charts, and photographs. It is designed as an introduction and general reference aid for those interested in the natural environment, resources, shipping, and political relationships of the Indian Ocean and its islands. 1976. 80 p. il.

S/N 041-015-00080-2

Atlas of Issues in the Middle East. Hostility among ethnic, religious, and traditional groups constantly threatens the Middle East, and at times erupts into open warfare. The issues in the Middle East that set peoples and nations against one another are numerous, complex, and diverse. Some are recent, but the origins of others may be traced thousands of years into the past. This atlas, by maps, charts, photographs and brief texts, highlights the critical issues and provides basic geographic, sociological, and economic perspectives of the area. 1973. 40 p. il.

S/N 041-015-00046-2

People's Republic of China, Administrative Atlas. 1976. 68 p. il., publications measures 10 x 14 in.

S/N 041-015-00076-4

Polar Regions Atlas. This atlas describes the developments taking place in the polar regions, both Arctic and Antarctic. It covers discovery and exploration, climate, physical features, natural resources, transportation, and other information relating to the regions. 1978. 66 p. il., 2 maps.

S/N 041-015-00094-2

U.S.S.R. Agriculture Atlas. This Central Intelligence Agency book, complete with comprehensive statistics, examines Soviet agriculture, its role in their economy, and the policies that govern it. Sources include studies by Russian agronomists and geographers, as well as official government reports. The book deals with Soviet technology, irrigation and drainage systems, land use, and erosion control. It analyzes the Russian system of farming and discusses the status of the country's top agricultural products, including corn, rice, and oats. It also compares their system with ours. 1974. 59 p. il.

S/N 041-015-00073-0

Maps of the World's Nations: Publications measure 10 x 14 in.

- **Vol. 1, Western Hemisphere.** Shows the boundaries and principal cities, rivers, and roads of each of the Western Hemisphere's nations on individual color maps. 1976. 46 p. il.

S/N 041-015-00078-1

- **Vol. 2, Africa.** Provides a one-page color map of each of Africa's nations, showing major cities, roads, and bodies of water. Includes a diagram illustrating the size of each country in relation to the U.S. and a brief summary of basic geographic data. 1977. 55 p. il.

S/N 041-015-00083-7

• **China map, Pinyin Edition.** Is a one-page multi-colored map which incorporates the new Pinyin (phonetic alphabet) spelling of names that became effective on 1 January 1979. The gazetteer on the reverse side of the map includes both the Pinyin and Wade-Giles renditions of geographic names. Most linear, spot location and name data were computer generated and plotted by the CIA's Cartographic Automated Mapping Program and World Data Bank II.

S/N 041-015-00106-0

• **World Data Bank II.** This cartographic data base, produced by the Central Intelligence Agency, represents natural and manmade features of the world in a digital format. Approximately six million points are contained on five separate geographic area files. Also available is the Cartographic Automatic Mapping Program, an IBM System/360 FORTRAN Level H or G and Assembly Language Code (ALC) program that performs a wide variety of cartographic functions and can be used in conjunction with World Data Bank II. Both the World Data Bank II and the Cartographic Automatic Mapping Program can be obtained from the **National Technical Information Service** (World Data Bank II PB 271-874-Set) (Cartographic Automatic Mapping Program FSWEC 780129)

Mr. CARLUCCI. It is accurate to say that the exemption that we propose would encompass most—I am not certain "all"—of the files of the DDO.

Mr. Chairman, let me emphasize that the DDO is a branch of our activity that is engaged in clandestine intelligence collection and is also charged, pursuant to processes established by law, with carrying out special activities should it be determined by the President that these activities need to be undertaken. I would not characterize it as an organization that engages in "dirty tricks," sir.

Mr. PREYER. Perhaps I should not have used the popular phraseology there.

I do want to commend you on your new openness attitude that you have mentioned. You have given up the "no comment" response. I have been interested in the Presidential scholars that come by my office from the high schools—the first thing they tell me when I ask them what they are doing in Washington is, "Well, tonight we are going out to the CIA headquarters." So I think you are creating some good will there.

In trying to get some handle on how much information your amendment might exempt, could you give us a rough approximation of how much of the information contained in the Rockefeller Commission on the CIA domestic activities report would have been required to be made public under the amendment that you propose to the Freedom of Information Act?

Mr. CARLUCCI. Mr. Chairman, I would be prepared to submit something for the record. I have not recently reviewed the entire Rockefeller Commission report. I believe that most of the information they provided would be made available. If you are referring to the oft-cited case of MKULTRA, as our amendment is framed, we would be responsive to first-person requests on drug testing. So, that would get at the MKULTRA type of thing.

I am not sure if that answers your question, but I would be glad to supply something for the record. Perhaps others of my colleagues could answer.

Mr. PREYER. On the finished intelligence report side of things, I gather that there was only one finished intelligence report in that operation, and I wonder if it would exempt everything else—all of the other files. I am talking about the CHAOS program.

Mr. CARLUCCI. Perhaps Mr. Mayerfeld could answer that.

Mr. MAYERFELD. Mr. Chairman, is your question, had there never been a Rockefeller Commission would the FOIA have produced the kind of information that was in the Commission report? Was that your question?

Mr. PREYER. Essentially, that is the question.

Mr. CARLUCCI. I think your question pertained to our amendment—our proposed amendment. Am I correct?

Mr. PREYER. Well, let us put it this way. If your amendment was in effect right now—was the law—or was in effect at the time of the Rockefeller Commission, how much information contained in that Rockefeller Commission study would have been required to have been made available under your amendment? In other words, would it have blocked the Rockefeller Commission from everything?

Mr. CARLUCCI. Not at all. The Rockefeller Commission essentially used the information that was provided by the Agency and made it public. There is nothing in either the current FOIA information or anything we propose that would prevent it.

Mr. PREYER. Thank you.

Father Drinan?

Mr. DRINAN. Thank you, Mr. Chairman.

Mr. Carlucci, I have reviewed here the nine exemptions from the FOIA. You have all types of ways by which you can keep things from individuals. You know them better than I. If all else fails, you can classify everything as it comes in, and then you never have to give it out.

So, my specific question is this. What information that the CIA has been releasing under the FOIA would no longer have to be released if you got the law that you want? What precisely are you seeking to protect? I understand all about perception. That is the problem on which people have to be educated. But what previously have you released that you regret that you are required to release?

Mr. CARLUCCI. Under the amendment that we propose, Father Drinan, we would essentially protect from search and disclosure our sources and methods, that is, our most sensitive intelligence operations. We would not protect the finished product, as I indicated earlier. We would protect the how and why.

Mr. DRINAN. Mr. Carlucci, what have you been required to release that you think should not have been released? Give me a, b, and c.

Mr. CARLUCCI. That is precisely the point, Father Drinan. In going through this process, when we come to sensitive sources and methods, after pulling the files together—contrary to good security practice—and reviewing them, we, in effect, are releasing a lot of shredded paper that does not contribute to the public dialog.

Hence, we are saying to the Congress, "Why not give us an exemption from this process which would (a) prevent the possibility of human error, (b) deal with the counterintelligence problem, (c) help us with the judicial review, and, above all, help us with the perception problem?"

Mr. DRINAN. Our problem and our duty is to make the Agency accountable.

You are asking for less judicial review; you are asking that the number of people in the Congress who have some responsibility be narrowed and lessened; and now the question is, to whom are you accountable? You want to be almost totally exempt from the FOIA, and where is the accountability? That is our job.

Mr. CARLUCCI. Father Drinan, we are not asking for exemption from accountability. On the contrary, we welcome accountability to the Congress. And I would suggest to you, sir, that the select committees in both the House and the Senate are doing a very effective job of oversight. We are constantly before them. They have total access to our information. I would submit that this is the proper vehicle for accountability.

If you are referring to the Hughes-Ryan amendment, there has been a suggestion—yes, sir—that briefing eight committees on covert action missions is contrary to good security practice, but never has this

Agency under Admiral Turner's and my leadership suggested that it be exempt from accountability. Indeed, that would be the last thing that we want.

Mr. DRINAN. To press my point, Mr. Carlucci, there are at least three or four judicial decisions that I know of where you people have been sustained against a person requesting under the FOIA certain information. So, I do not see really where you have released anything that has damaged the Agency or has put something into public domain that should not be there.

You are just saying, "Give us further secrecy so that we can assure our people in foreign lands that under no circumstances would it ever be possible to let it out because we are not even going to process the requests."

Mr. CARLUCCI. No, sir. Once again, we have indicated that we would process a substantial number of requests. I would estimate that our proposed amendment would only reduce our workload by about 15 to 20 percent.

Frankly, sir, we have prevailed in more than three or four court cases. We have prevailed in something like 72.

Mr. DRINAN. You have never lost, as a matter of fact.

Mr. CARLUCCI. No, sir.

Mr. DRINAN. You had a big victory yesterday in the Snepp decision, awarding the Government book royalties. You can take all the money you are going to get and process the FOIA requests. [Laughter.]

Mr. CARLUCCI. Father Drinan, may I correct the record on that point? Two district judges, as I indicated in my prepared statement, have recently ruled that information which we think should be classified should be declassified under the Freedom of Information Act. This declassification, in our judgment, will be seriously damaging to existing Agency sources and methods, and we intend to appeal the case. If we lose that case, this will have a chilling effect on our entire network of information, including our cooperating liaison services. This is a precise case where we are in difficulty as a result of the Freedom of Information Act.

Mr. DRINAN. One last question, Mr. Carlucci, before my time runs out.

Would your logic mean that the FBI should also be exempt from the FIOA?

Mr. CARLUCCI. Father Drinan, the FBI will have to speak for itself.

Mr. DRINAN. I know they will speak for themselves, but I am just asking you. If the logic is that this is chilling to the informants, then it seems to me that the FBI could use the same argument, and if the Congress bought it then the FOIA would not apply to the FBI either.

Mr. CARLUCCI. I understand that the FBI does have a problem with the FOIA, but I am only qualified to speak to the CIA's situation.

Mr. DRINAN. I thank you very much.

Mr. PREYER. Thank you.

Mr. Erlenborn?

Mr. ERLENBORN. Thank you, Mr. Chairman.

Mr. Carlucci, I want to thank you for your testimony but admit that the principal reason for the suggested legislation that you give us—the one of public perception—is, I think, the weaker of your two

arguments. It would seem to me your argument about the final quality of the information which is released after very expensive, time-consuming administrative procedures is more convincing.

It may be that you have chosen a route that would be more convincing to the majority of this subcommittee—possibly. The reason I say that is this. I was interested to note on page 5 of your prepared testimony a statement that you did not read. It is this: "It is in this spirit that we supported the foreign intelligence provisions of the privacy of medical records bill considered by your committee."

I do not know why you happened to skip that in your reading, but it recalled to mind another public perception issue that was before this committee. We had the medical records privacy bill before the committee; we had a parade of expert witnesses, one after another of whom answered the question, "Is the privacy of medical record information being abused on a widespread basis?" by "No." I was convinced after all that testimony that we had no reason to enact legislation.

But then we had a public pollster, Louis Harris, come before the committee, and he told us, in gaging public opinion, he found that the public generally thought medical records' privacy was being invaded; and so therefore this committee acted not to respond to reality but to the public perception.

So, as I said, maybe you have chosen the most compelling argument for the majority of the committee—to react to public perception rather than to reality—but to ask us to pass legislation only because there is a misconception seems to me to be the weakest of your arguments.

Mr. CARLUCCI. Perhaps I did not make myself clear, Mr. Erlenborn. I was not referring to public perception. I am referring to a very specific perception, that is, the perception of people who provide classified information to the Central Intelligence Agency. These are people who live, by and large, overseas, many of them in dictatorial societies. Many of them put their lives or their liberty in jeopardy in cooperating with us.

Let me create a little scenario for you, sir. Suppose you were a Cuban, knowing about the effectiveness of the Cuban DGI—the Cuban intelligence service—and you have some information, let us say, on the Soviet brigade in Cuba. You are wondering whether you should pass this to the CIA. You go to the CIA and say, "I am very worried about this. I have seen FOIA requests all over the press. If this information gets out, clearly it is going to be traced to me. Can you give me a guarantee that it won't be revealed?" We say, "Oh, yes. We will give you that guarantee because we have the two exemptions under the Freedom of Information Act. But we have to tell you, in all candor, that if there is an FOIA request on the information that you provide us, it will be reviewed, line for line, with an eye toward public release, and the burden of proof on not releasing it is going to be with the CIA. Assuming we do not have any human error in this process, we will get home free there, unless we are sued. Then your case will go before one of 435 judges who are entitled to make their own decision on the classification."

I ask you, sir, if you were that Cuban, would you cooperate with the Central Intelligence Agency?

Mr. ERLENBORN. I think I would like to pursue this a little further. Are you telling me it is a misperception but it is not public, it is private? Some individuals who are potential sources? Or are you telling me that their perception is correct—that you have to show this to so many judges and to so many people that it is likely to get out?

It is either a misperception, public or private, or it is a proper perception. I am really a little confused now from your answer which it is.

Mr. CARLUCCI. The perception that we are "leaky as a sieve" is a misperception. We can protect the vast majority of information, and we try to convince people of that.

Mr. ERLENBORN. That is what I understood you originally to say—that you wanted relief from a misperception.

Mr. CARLUCCI. But as I indicated too, in our business perception is reality. We have to deal with that perception.

Second, I indicated that we do have further problems with the act which make it very difficult for us honestly to give those guarantees. We continue to give them; I think we are right in giving them; but I have pointed out several areas where problems could arise. Fortunately, they have not arisen now, although I do not know how we are going to deal with these court cases.

Furthermore, let me emphasize that when I say there are misperceptions, and people ask me to demonstrate damage done, it is equivalent to asking us to demonstrate a negative. The universe is infinite with people who might cooperate with us were it not for the Freedom of Information Act. Usually they do not tell us. What I indicated in my testimony was that there were a number of people who told us. But how many people did not tell us, for every person who told us, is very difficult to judge.

Mr. ERLENBORN. Another area I would like to explore is this. On page 14 of your testimony you made reference to the courts where you say, "The court has, in effect, second-guessed the professional judgment of the Director of Central Intelligence. We hope to reverse this outcome on appeal." This is on classification.

You made a similar comment a moment ago that would indicate your understanding of the law that is contrary to mine. That is that the judge can review the classification of a document and decide whether it has been classified properly or not.

As I recall, when we worked with this act, we clearly steered away from allowing the judge to become a classifier, but, rather, we gave the judge the authority to decide whether something had been classified within an area of classification authorized under the Executive order. We do not have any law, as I understand it, but rather an Executive order that establishes the classification system.

In other words, the judge was not to say, looking at this document, it might harm the United States or it might not and therefore decide whether it should be classified. rather, the nature of the document itself—did it fall within that class that could or could not be classified? I do not recall the exact language of the act. but there was a real attempt, in which I think we were sucessful. in drafting the law. not to allow the judge just to be a second classifier but, rather, to make a

much broader judgment of what was allowed within the Executive order.

I might ask the people on your staff to confirm or correct me.

Mr. CARLUCCI. I think we do have a difference here.

Mr. MAYERFELD. That is quite correct. Our interpretation of the law is precisely as you articulated—that the legislative history says quite clearly that the judge is to pay substantial deference to the Agency's submission in this area. However, the act does say that the court should conduct a de novo review. He should look at the matter afresh. It does not define it any further. It was a decision in the Circuit Court of Appeals for the District of Columbia, *Ray and Shapp* v. *Turner*, in which the court of appeals here extensively, in effect, chided the district court judges for not doing their job sufficiently well. They said, in effect—do not rely on the Federal agencies. In fact, the concurring opinion said, in effect—the CIA is a bunch of liars anyway; don't trust them.

On the heels of that paricular decision by the Court of Appeals for the District of Columbia, there has been some confusion. The courts have increasingly looked at the documents in camera as the act entitles them to do. The act does not dictate it should be done, but the courts, not knowing how to handle these, have looked at the documents.

In the two cases that Mr. Carlucci cited, the judge looked at a mass of documents, gave us our claims as to most of the material in there, but picked out a few documents and said, in effect—I just don't understand what CIA is saying here. I don't understand why every word needs to be withheld. The truth is, in fact, that the judge did not understand.

It is a question that only someone who is expert in the arcane business of source protection can judge.

While this particular paragraph would have disclosed the source, the judge understood that wherever the source's name was mentioned that should probably be withheld. But wherever there was other descriptive information about the source, it was not that obvious. So, the court said, in effect, that its not properly classified, and he ordered it to be released. This is the kind of concern we have with the judicial process.

Mr. ERLENBORN. Let me again inquire on this. As I recall, the exemption for the classified document—and I may be wrong here in my recollection—exempted the document, not just the specific words within the document. That is what you do for all material—to excise portions. But as I recall, the exemption was for those documents properly classified under the system of classification established by the Executive order.

Mr. MAYERFELD. Quite right. But the act requires that segregable proportions which are not covered by any one of these exemptions, including the first exemption—the classification exemption—must be made available.

Mr. ERLENBORN. And the judge was deciding that words and phrases were of that nature?

Mr. MAYERFELD. Quite right.

Mr. ERLENBORN. I fear that you had a judge who did not understand the English language. That is certainly not the way this subcommittee understood the English language.

As I recall, I think we labored long and hard to draft this in a way that would not allow classification without review to give a blanket exemption to anything the Agency or the FBI would want to keep under cover, and yet give you a workable system. I think we crafted that. Good luck on your appeal; I think you will win.

Mr. MAYERFELD. Thank you.

Mr. ERLENBORN. Thank you, Mr. Chairman.

Mr. PREYER. Thank you, Mr. Erlenborn.

Mr. Evans?

Mr. EVANS. Thank you, Mr. Chairman.

I believe that this past spring the testimony that you presented at that time to the House Intelligence Committee stated that you believed there was less of a need today for public disclosure because there is now a mechanism for formal congressional oversight of the intelligence community. And today earlier, as I understood you to say, you do not want to further limit congressional oversight in regard to the FOIA.

Could I ask, then, what is the position of the CIA as far as congressional oversight of your Agency is concerned? Are you wanting the oversight reduced in terms of numbers of committees or not in terms of numbers of congressional committees?

Mr. CARLUCCI. Mr. Evans, I think your confusion on this point is understandable given the publicity that has been attached to the executive branch's position on the Hughes-Ryan amendment. That is a specific amendment that applies to what are called "special activities"—covert actions or operations—that is to say, secret operations that are designed to influence events in a foreign country.

If the CIA is to engage in these activities, the law requires a Presidential finding, and it requires us to brief appropriate committees of Congress, including the House and Senate Foreign Relations and Foreign Affairs Committees.

That amendment has been interpreted to encompass eight committees. It is our position that eight committees is too much. It is really the Congress decision on how to cut it down, but we think revealing special activities to up to 200 Members of Congress, in effect, no longer makes it a covert action.

That only applies to a very narrow portion of our activities.

Mr. EVANS. And you are only seeking that reduction of congressional committee involvement in regard to the Hughes-Ryan amendment?

Mr. CARLUCCI. To Hughes-Ryan alone.

Mr. EVANS. I see.

Mr. CARLUCCI. It does not apply to any of our other activities where very rigorous oversight is exercised by both the select committees in the House and the Senate. Nor does it apply to our appropriations activities which are subject to the same review process as any other agency.

Mr. EVANS. I see. I appreciate that clarification.

Also, on page 25 of your statement of today, you noted that the requests cost approximately $900 each to process; you collect an average fee of approximately $2 per request. Have you sought a more realistic fee in regard to the Freedom of Information Act administration as you are carrying it out?

Mr. CARLUCCI. Of course, the law only allows us to charge for search and copying. It does not allow us to charge for the review process which, particularly in an organization like the CIA, is the most complicated aspect of it. Furthermore, the law requires that when the request is in the public interest there shall be no charges. Most of the requests to the CIA seem to fall in the category of public interest. On two occasions when we have challenged that, judges have ruled against us.

So, we do not feel that upping the fee would be a particularly helpful remedy in terms of the kinds of problems that we have laid out.

Mr. EVANS. I see.

Mr. CARLUCCI. Let me emphasize once again that we really are not seeking a total reduction or a total exemption from FOIA. All we are seeking is an exemption for specified kinds of information relating to our sources and methods, our most sensitive information—from whom you got the information and how you got it, which has very little redeeming public value. We are not seeking any kind of across-the-board cutback.

Mr. EVANS. OK.

You have stated that you receive somewhere in the average of about 18 freedom of information, PA, and Executive order requests each day. What really would be the actual impact upon your workload here in terms of whether you were given additional exemptions from the Freedom of Information Act?

Mr. CARLUCCI. We estimate that the exemptions we have suggested would cut down our workload by approximately 15 to 20 percent.

Mr. EVANS. That would not seem to be a tremendous reduction.

Mr. CARLUCCI. That is correct. And that is why I emphasized to Father Drinan that we are not seeking sweeping exemptions from FOIA; we are seeking limited exemptions to protect our most sensitive information.

Mr. EVANS. Thank you.

Thank you, Mr. Chairman.

Mr. PREYER. Thank you.

Mr. Kostmayer?

Mr. KOSTMAYER. Thank you.

Mr. Carlucci, last April you testified before the House Intelligence Committee that as a result of President Carter's Executive order on declassification that you were required to do a certain amount of work. I think you said—correct me if I am wrong—at that time that 52 percent of the administrative burden that you had to undertake came as a result of the President's Executive order and of the Privacy Act itself. Do you recall that? Is that correct?

Mr. CARLUCCI. In terms of requests, Privacy Act and Executive order requests do outnumber FOIA requests. In 1978, we had 1,608 FOIA requests, 2,136 Privacy Act requests, and 428 Executive order requests.

It is very difficult for me to quantify the workload because we do not know how much workload is associated with any one request. As I indicated, we have had one person working full time for more than a year on one request. I think it would be virtually impossible to quantify the workload, but let me ask our experts.

Mr. OWENS. The Executive order provides us with about 6 percent of our workload.

Mr. KOSTMAYER. And the Privacy Act?

Mr. OWENS. 52 percent.

Mr. KOSTMAYER. So that makes 58 percent total?

Mr. OWENS. Yes.

Mr. KOSTMAYER. So, that leaves 42 percent as a result of FOIA. Is that right?

Mr. CARLUCCI. Yes, sir.

Mr. KOSTMAYER. Which does not seem to be as much as you indicated. We ought to recognize what we are dealing with here. Of the workload you indicated, only 42 percent is as a result of these problems you are having. Is that right?

Mr. CARLUCCI. That is correct, in terms of FOIA strictly. But, of course, the Privacy Act and Executive order are companion pieces.

Mr. KOSTMAYER. Are you seeking amendments to those as well?

Mr. CARLUCCI. No. I indicated that we would continue to be responsive to first-person requests.

Mr. KOSTMAYER. I just wanted to put that in perspective because I think it reduces that figure—it seems to me—rather substantially.

Are you not putting your Agency in the position of both judge and jury when you make these decisions? If the citizen feels aggrieved and requests this information, is it not legitimate to say that this is a matter which should go to the courts, to a third party, to an objective party, and that, after all, your Agency or any agency is not really in a position to make this kind of a judgment, that that is inherently a conflict of interest? That is really fundamental to our system. You are hardly going to be able to view it, I think, in an impartial, objective way.

Mr. CARLUCCI. Certainly, Mr. Kostmayer, we try to view it in an impartial way, and I think the record will show that we have been responsive to requests. We have a backlog, as I have indicated.

But, once again, bear in mind that we are dealing with extremely sensitive issues here, and as Mr. Mayerfeld has indicated, an arcane art—if you will—of source protection. I, myself, have been astounded since I have been involved in the intelligence business these past 2 years at how a sophisticated counterintelligence service can pinpoint a source from a seemingly innocuous piece of information. It is an extremely sophisticated business, and often lives are at stake.

Hence, it is our judgment that we must prevail in terms of protecting our sources. Otherwise, an intelligence organization cannot function. Without the ability to protect its information, an intelligence organization might as well not exist.

Mr. KOSTMAYER. But in a democracy, questions are going to arise, are they not? There are possibilities in which your Agency could be in the wrong. And who is to determine whether the citizen is right or the CIA is right? The CIA?

Mr. CARLUCCI. We have no objection to judicial review of the validity of our classification. We have questions with a de novo judicial review. Also, as I indicated, we have very rigorous congressional oversight, and our committees can look into the matter.

But getting back to the fundamental point of whether an intelligence organization is entitled to maintain its records secret, the Supreme Court addressed that in the *Snepp* decision.

Mr. KOSTMAYER. I do not disagree with you, sir, by the way. I think that you are entitled to maintain them, and I think there are provisions to review documents in camera to determine the applicability of the exemption. I am as appalled as you are at these recent publications that you have spoken about. It seems to me that there are provisions in the law which would protect your secrecy, and I think that needs to be protected. But that does not mean that you cannot go before a court.

Mr. CARLUCCI. No. We have just cited two instances of court decisions which, if upheld, will be extremely damaging to our intelligence operations.

Mr. KOSTMAYER. In your judgment.

Mr. CARLUCCI. In our judgment.

Mr. KOSTMAYER. Not in the judgment of the courts, though.

Mr. CARLUCCI. Not in the judgment of the courts, no.

Mr. KOSTMAYER. That is how we operate in this country.

Mr. CARLUCCI. We have been charged, sir, with conducting an effective intelligence operation, and part of that operation——

Mr. KOSTMAYER. That has to take second place to the constitutional protections which all of us have in this country. The CIA and every other Government agency is going to be subject to rigorous tests in the courts of the country. Sometimes those tests will be met by your Agency; on other occasions they will not.

Mr. CARLUCCI. The courts are interpreting laws passed by the Congress, and we are before you, sir, telling you the problems created by those laws in terms of the impediments that they will create for the effective functioning of the Central Intelligence Agency.

Mr. KOSTMAYER. Even in response to that, apparently these problems have not been created. Apparently you have not been required to release large amounts of information. It is rather rare, as you have indicated yourself. You almost always win these cases.

Mr. CARLUCCI. Sir, I have indicated to you several danger areas, and I have indicated to you a very serious problem that has arisen from the courts, and I have stated as clearly as I know that the perception of the erosion of our ability to protect our sources and methods is a most serious problem in our intelligence organization today.

Mr. KOSTMAYER. But it is an incorrect perception, nevertheless.

Mr. CARLUCCI. It is a substantially incorrect perception. It will be completely incorrect if we are able to deal with some of the problems that I have laid before you today.

Mr. KOSTMAYER. But you think we should base this decision on an incorrect perception.

Mr. CARLUCCI. I think that we have to base this decision on the reality in which we live, and the world of perceptions in the intelligence business is the world of reality.

Mr. KOSTMAYER. I think what you are saying—and I disagree with you, of course—is that we ought to base it on an incorrect perception and we ought to base it in the eyes of people who do not share our values or our feelings about these institutions. I do not think that is the way you ought to look at it, but I recognize that.

What you are saying, in short, is that in these cases where the Government feels the court is wrong, you ought to be exempt from their ruling.

Mr. CARLUCCI. No, sir. I have laid before you some problems which exist, and I have suggested a solution which is one of carefully crafted partial relief from the act; I have not suggested total exemption; I am not appealing specific court cases to the Congress; I am indicating to the Congress a series of problems that we have with the act which will, and are impeding the effectiveness of the Central Intelligence Agency.

Mr. KOSTMAYER. Would the passage of your amendment make these decisions not subject to court review, or would they still be subject to court review?

Mr. CARLUCCI. These two particular decisions do involve sensitive sources in the foreign intelligence area. Therefore, I believe those files would have been exempted under the amendment, but let me defer to counsel on that.

Mr. MAYERFELD. The question is whether we are seeking with this proposed amendment exemption from judicial review. We are not. Any item which we seek to withhold would still be subject to judicial review.

Mr. KOSTMAYER. So, even if the amendment is passed, the court could overrule it.

Mr. MAYERFELD. On a specific item of information, absolutely.

Mr. KOSTMAYER. Thank you, Mr. Carlucci.

Thank you, Mr. Chairman.

Mr. PREYER. Thank you.

Mr. Weiss?

Mr. WEISS. Thank you, Mr. Chairman.

Mr. Carlucci, in response to a question that was put to you by the chairman, you gave what I thought was a very carefully considered response. The question was, does the administration support your proposed amendment? As I recollect your answer, you said the OMB had checked your testimony and told you that the testimony was not in conflict with administration policy. Is that an accurate restatement?

Mr. CARLUCCI. I think the phrase was, "not inconsistent with the President's program," which has been a standard OMB phrase for years, indicating that legislative proposals are acceptable.

Mr. WEISS. All right. That, inferentially, suggests that, in fact, the administration may very well be supporting this proposal. The question that I have—because I have a recollection of having read sometime within the course of the last 2 or 3 weeks a statement attributed to the Attorney General, Mr. Civiletti, who supposedly expressed his opposition to your proposal—is this: Has this legislation, in fact, been the subject of discussion between the CIA and the Attorney General? Are you aware of any position, privately or publicly, taken by the Attorney General which, in fact, expresses lack of support for your amendment?

Mr. CARLUCCI. My understanding of the Attorney General's position is that he has not yet made a decision on whether he will support or oppose this amendment.

We have made the amendment and my testimony available to the Department of Justice. We have met with them. They have asked a

number of questions. They will have to speak for themselves. They have not indicated that they would be supportive of the amendment. All they have said is that they have not reached a decision.

Mr. WEISS. Have they, indeed, not expressed certain misgivings about the amendment?

Mr. CARLUCCI. They have raised a number of questions, but I do not think it would be appropriate for me to speak to the Department of Justice's position.

Mr. WEISS. I just want to be sure that our records, in fact, are complete, at least to the extent of not letting it appear that, in fact, the administration has already signed off on this amendment, which, in fact, they have not.

Mr. CARLUCCI. The administration has indicated that the amendment is consistent—that the testimony is consistent with the President's program.

Mr. WEISS. But you do not suggest to this subcommittee that that means that the administration supports your amendment?

Mr. CARLUCCI. I think we are talking about a distinction without a difference.

Mr. WEISS. I would be happy, though, if you gave me a yes or no answer as to what you are suggesting.

Mr. CARLUCCI. The administration has indicated that this amendment—this testimony is consistent with the President's program.

Mr. WEISS. I thought that your earlier formulation was that it was not inconsistent.

Mr. CARLUCCI. Or not inconsistent. Once again, I think we are talking about a distinction without a difference.

Mr. WEISS. For one who lives by the word, as we do on this side of the table and you do on your side of the table, I would think that you would be concerned about the semantic differences involved.

Let me ask you about some substantive aspects of the existing law.

Again, as preface, my understanding of your testimony was that the reason that the CIA believes it essential to have us adopt the amendment that you are suggesting is that the CIA is predominantly concerned about the disclosure of confidential sources and of confidential operations. Is that correct? I am talking about methods used by those sources or by your agents in relation to those sources.

Mr. CARLUCCI. We are concerned about the difficulty of gathering information, about the difficulty of creating a relationship of trust with potential sources who constantly indicate to us their lack of confidence in the CIA's ability to hold their information inviolate and frequently cite the Freedom of Information Act as a reason.

Mr. WEISS. Tell me again what specifically your amendment will do. I thought that you had responded to a number of the questions—that what you were addressing was a very narrow area primarily dealing with confidential sources and confidential methods of operation.

Mr. CARLUCCI. That is correct.

Mr. WEISS. That is correct? OK. Now, is it not a fact that section 552(b)(7) right now allows investigatory files to be withheld in those areas where it would disclose the identity of a confidential source and confidential information from a confidential source? Does that not

really already provide you with exactly the kind of protection that you are seeking in this matter?

Mr. CARLUCCI. Let me ask Mr. Mayerfeld to answer that.

Mr. WEISS. Mr. Mayerfeld?

Mr. MAYERFELD. Mr. Weiss, the (7) exemption refers to law enforcement records, and the CIA is not a law enforcement agency; so, except in very rare circumstances that has no applicability to us at all.

Mr. WEISS. Oh. So, you are not considered, for the purposes of that exemption, to be covered? That does not apply to the CIA?

Mr. MAYERFELD. It only applies in one very narrow area, and that is the area which—the legislative history of the act points out that there are certain administrative actions which fall within the meaning of law enforcement in that exemption, and that is specifically the investigation of the suitability of employment applicants and similar activities of that nature.

The information that we seek to protect under our source protection responsibility—what we usually invoke is the first exemption, which is classification, and the third exemption, which is information otherwise protected from disclosure by statute. As you know, the National Security Act gives the Director of Central Intelligence the responsibility to protect intelligence sources.

Mr. WEISS. There is another exemption under (7) which says, "where investigative techniques and procedures might be disclosed." Are you saying that that exemption also does not apply to the CIA?

Mr. MAYERFELD. I am saying that—again, except in this very narrow area of investigations dealing with the suitability of applicants and employees and so forth. But the general answer to that is correct—it does not apply to us.

Mr. WEISS. Suppose, in fact, those two subsections which I have cited, or the FOIA were amended to make it very clear that, in fact, those two provisions apply to the CIA. Would that satisfy the needs of the CIA?

Mr. MAYERFELD. No, Mr. Weiss, I do not think so. We, in effect, have already existing exemptions that will protect that kind of information, which is the classification exemption and our statutory exemption.

Mr. WEISS. So, what you are saying is this. Let me see if I understand it. What you are saying is, even though the specific language that I have quoted to you out of (7) does not itself apply to the CIA, provisions in clauses (1) and (3), in fact, encompass—even though they may not spell out specifically—the very exemptions that are included in (7) so that the CIA would receive the benefit of (7) through (1) and (3)?

Mr. MAYERFELD. Essentially that is correct. There are a couple of distinctions there, but essentially that is right.

Mr. WEISS. OK. But if that is true, I am now confused, and I will get back to the basic question which I apparently misaddressed through (7). If you already have the protection under (1) and (3), what more are you going to gain by what you are asking for in this amendment if, in fact, what you are seeking to protect is confidential sources and operations and procedures?

Mr. CARLUCCI. When we deal with a potential source, particularly when it is in a denied area, Congressman Weiss, they are very insistent on the protection of their information. The same thing applies to cooperating liaison services. Generally, the intelligence technique is to assure them that the information will be very closely held on a need-to-know basis— it will not get outside of CIA. In fact, most of them insist that it not get outside of CIA.

In order to give them that assurance, we would like to have the operational files exempted from the search and disclosure process. As I indicated earlier, when we have to say to them, "Well, we will put your information in a decentralized file, and we will give it protection, but you should understand that should an FOIA request come in we will have to review it line for line for possible declassification, and if we then turn down the FOIA request we are subject to litigation, and the judge can conduct a de novo review," that is hardly reassuring to somebody whose life or liberty may be at stake.

I am saying to the subcommittee that, under this exemption, we give out very little information of public significance. If that is the case, what conceivable objection could there be to granting us an amendment saying, "You don't have to search these files?" If we had such an amendment, we would be able to give a categorical assurance to our cooperating sources, and that would change the harmful perception that exists today.

Mr. WEISS. Then, again, if I understand you correctly, if you had that power, then the response that you would have had to give to Mr. Kostmayer's question is that, indeed, that decision would not be subject to judicial review. Is that not right?

Mr. CARLUCCI. I think what Mr. Mayerfeld was saying was that even when we deny records we can be challenged in the court under any circumstances, including our amendment.

Mr. WEISS. The refusal to undertake the search itself could be challenged—is that right?

Mr. MAYERFELD. No, it is not, as I envisage it. The act itself would provide that certain files, if they are properly designated by the Director of Central Intelligence, would be immune from the process of search.

Mr. WEISS. So that, in fact, there would no longer be judicial review—is that not right?

Mr. MAYERFELD. Of a disputed item of information, there would continue to be.

Mr. WEISS. Again, maybe I am mistaking it. I understood Mr. Kostmayer to ask you if, in fact, the amendment that you are proposing were adopted by the Congress, would then obviate any judicial review. And your response, as I recall it, was that, no, it would not obviate judicial review.

As I understand Mr. Carlucci the proposed amendment, in fact, would provide a total exemption from even searching the files to see whether the requested information is there because it would fall within a totally exempted area. Now you are telling me that in those instances, in fact, you would make the blanket decision given to you under the authorization of the amendment you are suggesting. You would not have to search that, and nobody could challenge that decision because

the statute said you would not have to search, and there is no argument possible. Is that not right?

Mr. MAYERFELD. The court would still have the right to check the veracity of our claims—"Is this particular document responsive to this request, indeed, in such a file designated? Was this file properly so designated?" That is subject to judicial inquiry.

If the court, however, determines that the file in which this document was contained has been properly designated by the Director of Central Intelligence, and indeed this is where the document resides, yes, you are correct—that closes the judicial review.

Mr. WEISS. OK.

Now, let me turn to another area. Mr. Carlucci, you said that your amendment would not apply to completed intelligence efforts. Is that right?

Mr. CARLUCCI. That is correct, sir.

Mr. WEISS. OK. Just to begin, I have tried to find in the proposed amendment that has been given to us the language which, in fact, provides that distinction as between ongoing investigations and completed intelligence efforts. Can you indicate what language provides for the distinction?

Mr. CARLUCCI. It is there by omission. Those things that are not covered in the proposed amendment would be subject to the FOIA process, and our proposed amendment is drafted to include only sensitive sources and methods.

Mr. WEISS. Let me see if we can do it together, because I want to be sure that, in fact, I understand what you are suggesting. Starting at line 9 on page 1, it says, "In the interests of the security * * * the Agency shall be exempted from the provisions of any law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or number of personnel employed by the Agency. In furtherance of the responsibility of the Director of Central Intelligence to protect intelligence sources and methods * * *," and then it goes on to say that you are going to say that you are also going to be, "exempted from the provisions of any law which require the publication or disclosure, or the search or review in connection therewith, if such files have been specifically designated by the Director of Central Intelligence to be concerned with: The design, function, deployment, exploitation," et cetera, "special activities and foreign intelligence or counterintelligence operations; investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources; intelligence and security liaison arrangements or information exchanges with foreign governments or their intelligence or security services;" and so on.

Suppose you had a request about a case, as you did in some prior cases which became the subject of some dispute and publicity, dealing, for example, with the investigation of operational support for recruitment—Project Resistance, for example—when you had completed that entire body of work—that report included methods of intelligence gathering or counterintelligence gathering, would those be eligible for disclosure?

Mr. CARLUCCI. I am not sure of the project that you are talking about. What we would be referring to in this amendment would be

foreign intelligence operations where we have cooperating sources and methods who would be providing us with information in confidence. There is nothing in the amendment which you read which pertains to the finished intelligence product, that is to say, an analysis of Iran, Afghanistan, or India. That would not fall within the category of this amendment. Frankly, I am not familiar with the project that you mentioned.

Mr. WEISS. I have a number of files which contain materials which were the subject of a series of intelligence reports and studies and inquiries undertaken by the CIA, most of which were ultimately disclosed on the basis of FOIA reports without the necessity of having to go to court. That is, they were initially refused, and then on the basis of your own internal review processes the determination was made that, in fact, they could be disclosed. The specific one that I was talking about was the CIA documents on Project Resistance and Merrimack, 1966, 1975—1,987 pages. The documents in this file contain a number of discrepancies from or additions to the account of the report of the projects in the Rockefeller and Church reports. These relate to the use of informants in a project known as Resistance. These relate to the scope of resistance, the use of Army counterintelligence information in "Resistance" reports, the proposed expansion of Merrimack in 1968, et cetera. OK?

Question: Would the work file—the completed work—of that Project Resistance and Merrimack study—could that be disclosed after the study had been completed?

Mr. CARLUCCI. If I understand the project that you were talking about, it was initially released by the Rockefeller Commission, and apparently subsequent FOIA requests developed additional information.

Mr. WEISS. Discrepancies, et cetera—right—and additions.

Mr. CARLUCCI. Anyone writing in with a first-person request, under our proposed amendment, would have that request answered to the degree that the material could be declassified.

Mr. WEISS. OK. But suppose, in fact, we were not asking a first-person request. Suppose the New York Times, deciding that it had gotten word of this Project Resistance in Merrimack and knew that that effort had been completed, and it wanted to get the total file, could the New York Times, on the basis of an FOIA request, get that information from the CIA if your amendment were adopted?

Mr. CARLUCCI. There is, of course, nothing that would prevent us from releasing information under the amendment.

Mr. WEISS. Under the proposed amendment would you be obliged, or could you, in fact, refuse to release it?

Mr. CARLUCCI. We are dealing in hypotheticals, but this would depend on whether it was put into the file designated under the amendment you read. That is to say, if those files were designated sensitive files pertaining to foreign intelligence or counterintelligence collection, so to speak, then they would not be subject to the search and disclosure process.

I am not certain, from the description that you give, that those files would come under that category. But, if I may, let me amplify on that because the historical files that we are talking about, of course, came out in a different era—an era before we had the Intelligence Oversight

Board, before we had the very rigorous congressional oversight that we have now. I would have no doubt that any such operation would become immediately known to both the select committees and to the Intelligence Oversight Board; and, indeed, we have had cases where the Congress might determine, under Senate Resolution 400, so to speak, that information should be made public. But there is a process that is available under the oversight mechanism.

Mr. WEISS. But that is different. Now we are talking about congressional oversight, and hopefully congressional oversight will always be strong and vigorous. But that was the assumption, or the expectation, in those years when, in fact, the CIA was unhappily going off in directions which it ultimately decided were the wrong directions—never mind the country deciding they were in the wrong directions.

The purpose of the FOIA—at least as I understood it—is to provide citizen safeguards in addition to congressional safeguards. But what you are saying now—as I understand it—is, "well, we have a sort of fail-safe mechanism because, even if FOIA would not allow you to get that information, congressional oversight itself is strong enough to fill the gap."

I asked the question because I did not—and I still do not at this point—clearly understand exactly what is intended by the amendment that you offer. I gather that, really, it has much broader ramifications than just what you have described; and I am not suggesting that you are intentionally misleading this subcommittee. What I am suggesting is that the ramifications of the exemption that are built in the amendment really require a great deal of thought.

The questions that I asked—and I think that probably we could ask many others along those lines—indicate that this is really a very complex area.

For example, I had thought that there was, in fact, a dual test, that is, that an applicant was entitled to receive that information either if it was an individual seeking information about that individual's own involvement or, even if it was not an individual, if the matter did not fit within the four categories that you outlined. But as I listened to your response, the impression that I got was that it would still have to be an individual seeking the information and, in addition, it would have to be outside those four exemptions. Maybe you can clarify that for us.

Mr. CARLUCCI. No; that is not correct, Mr. Weiss. An individual seeking information on his own file would undergo the FOIA review and disclosure process, even if that file were in one of these categories. I said that I was not able, from the information you had given me, to judge whether that particular file would be placed in one of the categories under the amendment. If it were, I indicated that it would not be subject to the disclosure process in toto, but we would still continue to respond to first-person requests.

Mr. WEISS. Suppose you had the kind of situation that developed with the mind-bending experiments with drugs, and that study or that effort had been completed, and, again, it was not just an individual or a family member of that individual who sought information on efforts or personal involvement, but, again, the New York Times decided that it would like the entire files on it. After your amendment

was adopted, would that study be available? Could anyone who sought that get it?

Mr. CARLUCCI. First of all, let me say, Mr. Weiss, that no such experimentation will take place as long as Admiral Turner and I are in that Agency, so we are dealing very much with a hypothetical here.

Mr. WEISS. You know, Mr. Carlucci, on that point, the gentlemen who preceded you, when they took those positions and when they held those positions, were thought to be every bit as high minded, and noble, and patriotic American citizens as you are, and yet all kinds of terrible things happened during their directorships, and I think the reason for our concerns—the reason for FOIA—is that, without questioning your motivation or your American citizenship and commitment, terrible things can happen, and that is why we need the protections of the law.

Thank you, Mr. Chairman, I think you have been more than generous.

Mr. PREYER. Do you wish to respond?

Mr. CARLUCCI. I just want to indicate that, once again, we are talking about problems that existed in an era long before the kind of oversight mechanisms that we have today were in place.

Mr. PREYER. I have just a couple of questions.

You mentioned that the Freedom of Information Act is a focal point of the allegation that the CIA cannot keep a secret, and you also mentioned other problems in that connection in creating this sort of "mood" or aura that you cannot keep secret these leaks and these published books and magazine articles by former agents. Is there any way in which you can measure the impact of the Freedom of Information Act on the creation of that mood? Why is it the focal point rather than these books, articles, or leaks? Is it possible the Freedom of Information Act is a victim of the other?

Mr. CARLUCCI. They are all serious problems, and, as I indicated in my testimony, we are trying to deal with them. The *Snepp* decision yesterday will be helpful in that connection. We have taken a series of steps, which I would be glad to submit for the record, to tighten up on our own internal security procedures.

Mr. PREYER. Without objection, they will be included in the record at this point.

[The material had not been received at the time of printing.]

Mr. CARLUCCI. I cannot measure in objective terms, but I can tell you in subjective terms that, as a result of looking at reports from posts all over the world, as a result of travel, as a result of my own contact with other liaison services, the Freedom of Information Act has become the focal point. It has become the symbol—perhaps unfairly—but it really has taken on a larger-than-life role. Perhaps that is because it is under consideration in some other countries—I do not really know why. Perhaps it is because there are so many articles that come out that are labeled, "Freedom of Information Act," that people around the world think that anybody in this country, or any other country for that matter, can obtain whatever information they want, willy-nilly, under the Freedom of Information Act. But that perception is a fact.

Mr. PREYER. I think that is simply a misperception that all you have to do is file a request and it is immediately revealed.

You cited in your testimony the corporate officer—I think you said he had been a former Cabinet member here——

Mr. CARLUCCI. Yes, sir—a very respected one.

Mr. PREYER. He said something like, "I would not cooperate with you as long as the Freedom of Information Act exists." You would think that a man like that would understand, if it was put to him, that the Executive order provides that confidential information from foreign governments or which would reveal foreign intelligence sources is of a classifiable nature and thus is exempt under the Freedom of Information Act first exemption. At the present time under that Executive order, "foreign government information may remain classified virtually in perpetuity." Why is that not a solid argument to use with an intelligent man like a corporate executive that this is not going to be revealed? Is your point the fact that that is subject to judicial review? Is that where that argument breaks down as being a good argument to destroy this perception?

Mr. CARLUCCI. Let me say that I did try to convince my interlocutor that we could protect information, but he was not to be convinced. And my point in citing that is to indicate that it is difficult to convince as sophisticated an individual as this one—and he is a very sophisticated individual—so it is virtually impossible to convince a relatively unsophisticated person in another country whose life might be at stake.

Judicial review is a problem, yes. I indicated four areas that we thought were problems for us. One is the possibility of human error, which I recognize you cannot do a lot about. But it is a peculiar problem in the Central Intelligence Agency where we are so decentralized and operate on a need-to-know basis that really only one individual—the man with the substantive knowledge—can make the decision.

I indicated that the problem of misleading the public through partial releases—the Tom Dooley case—is a real one. I also indicated the counterintelligence problem, that is, the mosaic problem. We do not know what the requester actually holds, and, indeed, foreign intelligence services would be very foolish if they were not availing themselves of the Freedom of Information Act. The most innocuous piece of information can sometimes be the final piece to the puzzle.

So, those, coupled with judicial review, do give rise to concern.

Let me emphasize—going back to the point that was made on the Democratic side of the bench—that by judicial review I mean de novo review of the classification; I am not talking about total exemption from judicial review.

Mr. PREYER. Let me ask this. I guess this is the real thrust of what we are working toward here. Is there not something short of total exemption from the Freedom of Information Act that would satisfy your problem with the perception of foreign agents? For example, a more limited proposal such as this one in section 222 of the new proposed charter—Senate bill 2284. This provision says, under "Cooperative Arrangements":

> Notwithstanding the provisions of this title, no agency, Federal officer or employee may be required in connection with any proceeding under section 221 to disclose to a court information concerning any cooperative or liaison relationship

that any agency of the U.S. Government may have with any foreign government component thereof: *Provided*, That the Director of National Intelligence has determined that such disclosure would jeopardize such relationship.

Would this not satisfy their perception?

Mr. CARLUCCI. That relates to certain processes under the act for the collection of intelligence on Americans under certain safeguards. The problem arises with regard to cooperating with a liaison service who would be unwilling to give us information if that information is subject to release to a court. Hence that particular provision was written into the charter proposal.

Frankly, Mr. Chairman, I think we have made a limited proposal. We are far short of asking for total exemption from the act. I indicated that our workload would only be lightened by some 15 to 20 percent by our proposal. All we are asking for is protection from the search and revelation of ways in which we collect information and from whom. The vast majority of material in the CIA is finished intelligence or first-person requests, and that would continue to be subject to the Freedom of Information Act process.

So, we think now we have our request down to the absolute minimum.

Mr. PREYER. Are there any burning questions that any of the rest of you have? I think we will need to recess shortly.

I think this has indicated that this is a very complex subject, and I am glad we have begun the dialog on it. I think, as we all think about it, if we come up with some thoughts on it, we will want to go into it further.

Mr. Kostmayer?

Mr. KOSTMAYER. I have one brief question.

Mr. Carlucci, the Executive order—the FOIA provides an exemption for information treated as classified under the Executive order. Classification standards are contained in the new Executive order. If there was a need for greater secrecy in the CIA for certain categories of information, should they not be included in the Executive order, or, indeed, are they?

Mr. CARLUCCI. The problem, Mr. Kostmayer, is not classification standards. The problem is the review and release process for certain highly sensitive files, and changing the classification standards would not deal with that problem.

Mr. KOSTMAYER. But the amendment gives to the Director the discretion to categorize or to classify this information. It is then, by that definition, by virtue of the fact that it has been so classified, that you are able to withhold it. So, it is indeed a matter of classification rather than review, is it not?

Mr. CARLUCCI. We are not really talking about a classification in the security sense. We are talking about designating certain files as sensitive files in terms of the amendment, and those files would then not be subject to the FOIA process unless—to get back to Congressman Weiss' point—they were subject to first-person requests.

Let me say, with regard to the designation of these files, I would be more than willing to indicate to our oversight committees which files—which general categorical files—we have exempted consistent with this amendment.

I would emphasize the point that I made to Father Drinan, that we are not seeking any exemption from oversight. All we are seeking—

very sincerely here—is to be able to give to our cooperating sources the reassurances necessary to allow us to conduct our mission effectively.

Mr. KOSTMAYER. Did you request when the Executive order was being drawn up that this be included?

Mr. CARLUCCI. I was not in the Agency at the time, but it is my understanding that we cannot deal with this problem through the Executive order because the problem was created by the 1975 amendments to the Freedom of Information Act.

Mr. KOSTMAYER. If there is a situation in which the Director has categorized or classified information, it is my understanding then that the court can only go so far as making a decision or judgment as to whether or not he has acted properly in so defining it. Once they have determined that the Director has, indeed, properly in that categorization or classification—that they have made an affirmative judgment that he has acted properly—that is the end of the line as far as the judicial review process is concerned. Is that right?

Mr. CARLUCCI. That is right.

Mr. KOSTMAYER. And, of course, if the court determines that he has acted improperly, they would have the right to order that that information be disclosed.

If, indeed, they do determine that he has acted properly, the de novo review procedure seems to me to be difficult to apply without the court learning of the substance of the information that has been classified. Is that right or wrong? And how is that done?

Mr. CARLUCCI. Review for the validity of the classification would not necessarily require an exhaustive study of the information. But we would certainly be willing to provide the information for an in camera review.

But let me just say here, Mr. Kostmayer, that to understand the complexities of the release issue that a judge would be dealing with, he would, in effect, have to understand our entire operations in a country; he would have to understand the method of operating and the effectiveness of the counterintelligence service of that country; he would have to understand the movements of a particular agent; he would have to understand how all of the reports submitted by that agent would be pieced together.

Mr. KOSTMAYER. In determining whether or not the Director had classified the information correctly?

Mr. CARLUCCI. In determining whether or not the information should be released without doing damage to the sources and methods—yes, sir. It is a very complicated process.

Mr. KOSTMAYER. What if the judge determines that the Director has acted properly in classifying this information and therefore it cannot be disclosed, but he determines in his review that the laws have been broken by the Agency? What is he to do then?

Mr. CARLUCCI. Certainly if he determines that we have broken the law in any way, he can take remedial action. I assume he can issue an injunction. I would defer to counsel on this.

Mr. MAYERFELD. I do not think that issue has ever been decided. Your question is, if an item or document is properly withheld under the exemption, does the court then have the authority to release that information because he has determined that the action described——

Mr. KOSTMAYER. I am not asking if the court has the authority to do that; I am asking what is the court to do?

Mr. CARLUCCI. In other words, if the document reveals that the CIA has done something illegal?

Mr. KOSTMAYER. Right.

Mr. CARLUCCI. Certainly if it revealed that we were doing anything illegal in the process of pulling together that information, that illegality would be revealed either to our Inspector General, our General Counsel, the Intelligence Oversight Board, or one of our parent committees on the Hill. Certainly if it came to my attention, I would be required——

Mr. KOSTMAYER. Surely—if it came to the attention of the committees on the Hill.

Mr. CARLUCCI. No—if it came to my attention or if it came to the attention of the vast majority of employees in the Agency, I am convinced that it would be revealed.

Mr. KOSTMAYER. With all due respect, Mr. Carlucci, the record of the Central Intelligence Agency leaves a great deal to be desired in terms of upholding the law.

What if the committees here in the Congress did not become aware of it—and there is no reason to think that they should necessarily? They could, of course, but what if there were an instance in which they did not become aware of it?

Mr. CARLUCCI. Mr. Kostmayer, you are posing hypothetical upon hypothetical based on an assumption that nobody in the CIA is an honorable person, and I frankly cannot accept that.

Mr. KOSTMAYER. I am not suggesting that, and you are basing part of your testimony on assertions which you acknowledge are not valid, so I do not think you are in a position to criticize my hypothesis.

But, in any event, what would a judge do if he were prohibited under the law from disclosing the information or from ordering the disclosure of it, but he discovers in his de novo review that the Agency has violated the law?

Mr. CARLUCCI. I think he could go to the Intelligence Oversight Board. I defer to counsel.

Mr. KOSTMAYER. And disclose it?

Mr. CARLUCCI. Yes, sir.

Mr. MAYERFELD. To the Intelligence Oversight Board—yes, sir.

Mr. KOSTMAYER. So he could disclose it, then, to the Intelligence Oversight Board?

Mr. CARLUCCI. Yes.

Mr. KOSTMAYER. They are not subject to the law in this sense—that they could have this information revealed to them?

Mr. CARLUCCI. They can have any information in the Agency disclosed to them, and there is no breach of the law.

Mr. KOSTMAYER. Thank you.

Thank you, Mr. Chairman.

Mr. PREYER. Mr. Weiss?

Mr. WEISS. Mr. Chairman, I have one question, if I may.

We have a copy of Senate testimony given by Deputy Administrator Blake in September of 1977, and at that time—as chairman of the CIA's Agency Information Review Committee, and the one responsible

for the implementation of FOIA in the Agency, he was proud to comment about FOIA:

> My colleagues have worked very hard during these past 30 months to make the act work according to the letter and spirit. We have been able to make the necessary adjustments. I am pleased to report that, in fact, I think the Agency is better off for it.

That was before a Senate committee on September 16, 1977.

What has happened in the last 2 years? Were you not aware of the perception problem then?

Mr. CARLUCCI. Let me just say that I disagree with that statement by Mr. Blake, and I cannot really speak for him, but I would suggest that the subcommittee have another conversation with him because that is not the view that he reflected to me most recently.

In any event, I have laid out the situation as I perceive it, and I am an authorized spokesman for the Agency.

Mr. WEISS. Two years from now someone else will be sitting there saying that they disagree with Mr. Carlucci's statement on February 20, 1980.

Mr. CARLUCCI. That is their prerogative.

Mr. WEISS. That is right.

Thank you, Mr. Chairman.

Mr. PREYER. Thank you.

We appreciate your being here, Mr. Carlucci. You have certainly pointed up the problems that you have when you come in conflict with notions of an open society and informed participation by the citizenry on the one hand—the need for an effective intelligence service on the other hand. And I hope working out the answer to that is not beyond the wit of humankind. We certainly will look forward to trying to resolve this problem.

Thank you very much for being here.

The subcommittee will stand adjourned. We will anticipate further dialog on this subject.

[Whereupon, at 4:20 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

THE FREEDOM OF INFORMATION ACT: CENTRAL INTELLIGENCE AGENCY EXEMPTIONS

THURSDAY, MAY 29, 1980

HOUSE OF REPRESENTATIVES,
GOVERNMENT INFORMATION
AND INDIVIDUAL RIGHTS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2247, Rayburn House Office Building, Hon. Richardson Preyer (chairman of the subcommittee) presiding.

Present: Representatives Richardson Preyer, Robert F. Drinan, David W. Evans, Ted Weiss, M. Caldwell Butler, and John N. Erlenborn.

Also present: Timothy H. Ingram, staff director; Timothy Hutchens, professional staff member; Euphon Metzger, clerk; and Thomas G. Morr, minority professional staff, Committee on Government Operations.

Mr. PREYER. The subcommittee will come to order. I apologize for being late because of the caucus on the floor.

I appreciate your being here today.

We continue hearings today on the effect of the Freedom of Information Act on access to intelligence information, particularly at the Central Intelligence Agency.

Before us this morning are two principal bills, H.R. 7055 and H.R. 7056. H.R. 7055, which I have introduced, addresses a problem that the CIA says it has with sources who perceive the Freedom of Information Act as a reason why the CIA does not always keep its secrets.

On February 20 when we last held hearings on the effect of the Freedom of Information Act on the CIA, Mr. Carlucci, the Agency's Deputy Director, told us that the law protects vital intelligence information, but he outlined concerns about its administrative burden and impact on intelligence sources. We acknowledged that leaks, espionage, and revelations by former Agency employees are also responsible for the perception that the CIA cannot guarantee the confidentiality of its sources.

In order to see whether there is a need to modify the access provisions we have invited representatives of public interest groups as well as historians and a representative of journalists to testify and answer questions today about whether the CIA should be further exempted from provisions of the Freedom of Information Act.

H.R. 7056, the second bill under consideration today, goes farther than mine. The CIA and the Justice Department requested it and I

introduced it on their behalf in order to bring it before the subcommittee.

The second bill's main provision would eliminate judicial review of decisions, not just by the CIA but also by the FBI, on whether to disclose certain intelligence and counterintelligence information.

Other provisions of the bill are also sweeping. To hear about their potential impact I would first like to call upon Mr. Morton Halperin, director of the Center for National Security Studies; and Mr. Mark Lynch, counsel for the ACLU—American Civil Liberties Union—project on national security.

It is a pleasure to have you gentlemen with us today. Your statements will be made a part of the record. You may proceed in any way you see fit. I call on Mr. Halperin first.

STATEMENT OF MORTON H. HALPERIN, DIRECTOR, CENTER FOR NATIONAL SECURITY STUDIES

Mr. HALPERIN. Thank you, Mr. Chairman. We appreciate very much the fact that you are holding these hearings and your invitation to us to attend.

We have prepared a rather lengthy analysis of the CIA arguments for an amendment. They are attached to our statement and I would like to ask that they be made a part of the record with the statement.

Mr. PREYER. Without objection, so ordered.

Mr. HALPERIN. I should note that in the appendix to that report is a letter addressed to you and to the chariman of the other committees with oversight responsibility for the Freedom of Information Act from 15 individuals and national organizations arguing against any amendment to the Freedom of Information Act for the CIA. That is with the report and I would also like to ask that that be made a part of the record.

Mr. PREYER. Without objection, that will be made a part of the record as well.

Mr. HALPERIN. I would like to do two things briefly this morning. The first is to summarize the conclusions that we have reached in looking with care at the arguments that the CIA has put forward for their amendments. The second is to describe to you briefly the way in which we use the act and the reason why we would object to any substantial amendment, particularly any amendment that affected judicial review of CIA decisions.

We believe the record shows that the CIA and the intelligence community in general have ample authority to protect classified information and to protect intelligence sources and methods. Indeed, it remains the case as it was when you previously held hearings that not a single sentence has been released to the public under court order in circumstances where the CIA has argued that the release would injure the national security.

The problem, as the CIA admits, is a problem of perception or misperception on the part of foreign intelligence agencies and foreign intelligence sources, but we do not believe that this problem can be solved by amending the Freedom of Information Act because it is based on a number of other ways in which information reaches the press—from leaks, from publications of memoirs, from publications

of books based on interviews with CIA officials, from leaks from high White House sources to justify operations conducted at the direction of the President, and so on.

We believe that all of those would go on even if the Freedom of Information Act is amended.

Moreover, the CIA, when it was testifying before this committee and in other places, was suggesting that only a far more sweeping amendment would accomplish anything for them. They are now supporting an administration bill which is far less sweeping than what they originally asked for.

I think the truth is that the only thing that would do them any good, as far as this perception problem is concerned, is for them to be totally exempt from the Freedom of Information Act. They have not sought that and I think that the truth is that anything less than that will simply not solve whatever part of the perception problem could be solved by changing the Freedom of Information Act.

The CIA, we believe, also overestimates substantially the administrative costs and burdens of the Freedom of Information Act. Mr. Carlucci testified here that only 15 or 20 percent of their requests would be covered by the proposed amendment.

I would make two points about that. The first is that under the Executive order issued by the President on classification any citizen can request declassification of any document in the possession of the CIA, so that even if this amendment went into effect, or if a more sweeping amendment did, you could still ask for the same material under the Executive order. The CIA would still be required to do the search, would still be required to do the review, and would still be required to produce a decision on whether or not the document could be released.

The difference, of course, would be that there would be no judicial review, but there would not be any reduced administrative burden on the Agency.

Moreover, the CIA's burden is small, as far as we can tell, compared to other agencies. It gets fewer requests according to the annual reports than does the Department of Transportation, not to speak of HEW or the Department of Defense.

Of course, since the CIA's budget is secret, I do not know whether the amount of money they spend is a higher fraction of their budget than is that of the Department of Transportation, but one suspects that it is not out of line with the percentage of the budget spent by a great number of other agencies under the Freedom of Information Act.

Finally, and most important, I think the CIA drastically understates the adverse impact of the proposed amendment on the public's right to know. It is not true, as they suggested, that no important information comes out. Indeed, a great deal of important information about a number of CIA activities and CIA programs has come out under the Freedom of Information Act.

This information, in many cases, has added to—and in some cases contradicted—what was contained in official reports based on information that the CIA made available, for example, to the Church committee and other committees.

Let me try to discuss a little more about that by explaining what the Center for National Security Studies does and how it uses the Freedom of Information Act.

Our role is to try to enable citizens, public interest groups, and others, including those in the Congress, to know about what the CIA and other intelligence agencies are doing in order to participate intelligently in discussions about policies that affect the CIA—most notably the proposed charter for the intelligence agencies which has been debated over the past several months and the question of appropriate oversight of the CIA.

For that purpose we have made very extensive use of the Freedom of Information Act. Beginning on February 19, 1975, when the new amendments reported by this committee and adopted by the Congress over President Ford's veto, went into effect, we started making requests of the CIA. We have been making requests consistently since then.

We have filed more than 50 requests for documents from the CIA under the Freedom of Information Act. We have filed some 15 lawsuits for documents from the CIA under the Freedom of Information Act.

We regularly review documents that are released to us as a result of our requests or our lawsuits, or that are released to others, to determine what information in those documents is new and important to public debate on intelligence agency issues. We publish those summaries in our newsletter and then in a report that we publish regularly called from official files, which summarizes those documents.

I have included with our statement the latest version of those summaries. I think if you glance at them you will see that a great many very important documents of great relevance to public debate have been released under the Freedom of Information Act.

We use those documents regularly in congressional testimony. We have testified by request before the Senate and House Intelligence Committees, the Senate and House Judiciary Committees, and other committees of the Congress on issues related to intelligence agencies. We would not be able to testify effectively and give the Congress the kind of assistance that it asks us for unless we had the kind of information and documentation that we regularly get by using the Freedom of Information Act.

Let me just, briefly, give one or two examples of this role.

Prior to the 1975 amendments we made requests to the CIA under the Freedom of Information Act. We were told, as almost everybody who made a request was told, that the Agency was exempt from the act, that anything that was classified was exempt, that anything that protected sources and methods was exempt, and that everything in their files fit in both of those categories. Therefore, there was no reason to search. They simply would not make the information available to us.

That is, of course, the procedure and the situation that the Agency would like to return to under these amendments, at least the one that they originally proposed.

This meant, for example, that there was no way to challenge what the CIA said. CIA Director Richard Helms made a speech in which he told the American people that the CIA did not spy on Americans. You may have seen him on the news last night explaining that they did spy on Americans and that he thought they had a right to spy on Americans, including journalists, to track down leaks.

He was saying publicly that at precisely the time when he had people following Jack Anderson and all of his colleagues around, when he was spying on the antiwar movement and had files on thousands and thousands of Americans, that the CIA did not have authority to spy on Americans and did not spy on Americans.

He repeated the same information before the Senate Foreign Relations Committee and there was no way that we or anybody else could challenge that under the old act.

When the new act came in, one of the first documents that we asked for was the Vail report, the report that William Colby prepared for President Ford to respond to the charges in the New York Times that the CIA did spy on Americans.

The administration, you may recall, at that point put out a statement which essentially denied the accuracy of the New York Times' story. The President had on his desk the report from Mr. Colby which essentially confirmed the accuracy of the New York Times' story.

We asked for that document under the Freedom of Information Act. We were told that not a word of it could be made public. We appealed. We were again told that not a word of it could be made public. We filed a lawsuit. We noticed a deposition of a senior CIA official, and faced with the prospect of coming before us in a deposition and having to answer detailed questions about what was in the document, the CIA on the eve of that deposition suddenly released the report, announcing that it was doing so consistent with its general tendency to inform the public and make information available, when in fact it was clear that it had released it only because of the lawsuit.

That has not changed. We are still in a battle with the CIA to get them to make public information about their surveillance of Americans.

The Executive order under which the CIA operates, 12036, requires the CIA and all intelligence agencies to produce implementing directives specifying in detail their right to spy on Americans under various circumstances and to get the approval of the Attorney General for those directives.

The CIA drafted directives. They were approved by the Attorney General last August. The CIA made no public announcement of the fact that those directives existed. They did not publish them, as we believe they were required to do by the provisions of the Freedom of Information Act requiring the publication of regulations which effect the public.

When we called them up and urged them to make them public, because they are totally unclassified, they refused to do so. They suggested to us that we file a request under the Freedom of Information Act.

We did that and a month or two later we have finally gotten half of those directives. They have not given us the other half for reasons which we still do not understand and are exploring with them.

The plain fact is that if the CIA had gotten the amendment that they had asked for passed in the Congress we would have had no way to get them to make public implementing directives which are unclassified and which specify in detail their right to spy on American citizens under a wide variety of circumstances and really constitute a

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secret charter which authorizes very extensive and, we believe, unconstitutional—I might add—surveillance of American citizens.

We have also obtained from the CIA, as we mention in our statement so I will not go into the details of that case, information about the CIA use of academics which tells far more about that story than has come out in the Church committee report. We think we are entitled to a great deal more and we are pressing that issue. It is a matter of great concern to a number of people in connection with the CIA charter and with current CIA practices.

I do not want to leave you with the impression this morning that we think the FOIA—Freedom of Information Act—is functioning as well as it should. Indeed, we believe that the CIA has been deliberately delaying responses to requests, not only from the Center for National Security Studies but from other users, in the hope that Congress will amend the act and free it from the requirement to search and review and to submit documents for judicial review.

We have recently filed, Mr. Chairman, a lawsuit which makes those allegations, which lays out a series of requests that we have made, some of them going back to 1976, for CIA documents which the CIA has not made available to use. They continue to tell us that they are working on them and that they will make them available some day. These are laid out in this complaint which I would ask be attached to our statement and which I think demonstrates that the Agency is simply not living up to its commitments, not only to answer requests in 10 days but to diligently pursue release of information as quickly as possible.

Finally, I would like to emphasize—and Mr. Lynch may want to add to this as well—the essential role that we believe judicial review plays in this process. That is not because courts are likely often, if ever, to order the Agency to release material, but because the knowledge that they will have to go into court, that they will have to sign affidavits, that a judge may actually look at the information in camera, is a little like what somebody once said about the threat of hanging. It clears the mind.

It forces one to think hard and clearly about what it is in fact that they can withhold and what it is justified to withhold. We think that threat of judicial review, the knowledge that it was there, has led the Agency to release a great deal of information which they would simply not release if they got the ability that they seek to simply certify that information is exempt and to not have judicial review.

We think the 1974 amendments, for which this committee was largely responsible, have made the CIA a better institution. We are certain that they have played a major role in permitting the kind of public debate on intelligence agencies which is vital in a democratic society.

We urge you not to change that situation. We would ask that you leave the law the way it is and that you press the CIA to fully comply with the letter and the spirit of the law as it is now written.

Thank you, Mr. Chairman.

Mr. PREYER. Thank you, Mr. Halperin.

Before we pass to questions we will call on Mr. Lynch for his statement.

STATEMENT OF MARK LYNCH, COUNSEL, AMERICAN CIVIL LIBERTIES UNION PROJECT ON NATIONAL SECURITY, CENTER FOR NATIONAL SECURITY STUDIES

Mr. LYNCH. Thank you, Mr. Chairman. I do appreciate the opportunity to appear here this morning, particularly before a committee, as Mr. Halperin pointed out, which is largely responsible for grappling with these questions of judicial review and classified information in the 1973 and 1974 Congresses.

The committee reached a judgment at that time that was accepted by the House and accepted by the House-Senate conference that courts can play a proper role in reviewing de novo claims that information is classified. President Ford disagreed with that judgment, vetoed the bill. As the committee will recall, the veto was overridden. I think the committee will recall, only 7 or 11 Members of the House voted to sustain the veto.

There was an overwhelming consensus, which this committee developed at that time, that the act strikes a proper balance and the CIA simply has not made the case that that judgment should be revised.

I would like to comment specifically on H.R. 7056, which I understand is the administration's proposal. I would like to point out what I think is the really invidious and pernicious provision of that bill which seeks to overturn that judgment that the Congress and this committee reached in 1974. That is the sentence beginning on line 12: "In each such instance the certification shall be conclusive and not subject to any judicial review."

This is based on the CIA's contention that the possibility that the judges may review information in camera is causing a catastrophic disruption of the CIA's relations with foreign sources. The foreign sources are reluctant to deal with the CIA or provide information to the CIA because a judge may look at it at some point and the judge has the authority to order its disclosure. This is their contention.

As Mr. Halperin pointed out, in all of the many many cases which have been litigated so far under the Freedom of Information Act there is only one case wherein Judge Gerhardt Gesell ordered information that the CIA contended was classified to be released, and they were just a very few fragments of information in a document.

The information has not yet been released because it is on appeal. The CIA could well win on appeal, in which case they will have maintained their perfect record of always being able to persuade judges, when it gets down to the crunch—after the initial request process, the appeal, the litigation process, during all of which more information is generally made public—but when it gets down to that hard kernel of what is really classified, when all of the insubstantial arguments for classification have been stripped away, they always win.

They simply cannot point to any breach of security as a result of the judiciary.

If we compare this to the situation that a foreign source faces whenever he provides information to the CIA, we come to what he has to think about. Where might that information go? Well, it can be distributed to the various components of the Central Intelligence Agency, and there are a lot of people there, and sometimes they leak.

The information sometimes may go to the White House, and the White House leaks. The information goes to the Department of Defense, and the Department of Defense leaks. The information goes to the State Department, and the State Department leaks. The information can go to Congress and, although Congress does not leak anywhere near as much as the CIA says it does, sometimes it does.

Finally, a citizen can trigger review of the classified information by the information security oversight law. This was established by the Executive order. That means that people from the Archives and officers of the General Services Administration can get into the act.

All these people may review and learn the contents of information provided to the CIA by a foreign source, but the CIA says it cannot be provided to the Federal judiciary. I think that is a wholly unwarranted attack on the integrity of our Federal bench. There is no case for it, and I think this proposal should be firmly rejected as wholly unwarranted.

Thank you, Mr. Chairman.

Mr. PREYER. Thank you very much, Mr. Lynch.

Without objection that material you have provided with your statement and your statement will be included in the hearing record at this point.

[Prepared statement by Morton H. Halperin and Mark H. Lynch, with attachments, follows:]

STATEMENT BY MORTON H. HALPERIN AND MARK H. LYNCH

ON BEHALF OF THE

AMERICAN CIVIL LIBERTIES UNION

AND THE

CENTER FOR NATIONAL SECURITY STUDIES

BEFORE THE SUBCOMMITTEE ON

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS

OF THE

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

H.Res. 7055 and 7056

MAY 29, 1980

Mr. Chairman,

We appreciate very much the invitation to appear before this subcommittee this morning to discuss the proposed amendments to the FOIA related to the CIA and other intelligence activities.

The Center for National Security Studies has prepared a detailed analysis of the CIA arguments for an amendment which it has presented before this subcommittee and elsewhere. We would ask that this report, which is attached to our statement, be made part of your hearing record. After summarizing its main conclusions we propose to discuss the great importance of the FOIA to CNSS in its role as a public interest group monitoring the activities of the intelligence community.

Our study of the CIA arguments in favor of a drastic amendment to the FOIA leads to the following conclusions:

-- The intelligence community has ample authority under the current FOIA to protect classified information and intelligence sources and methods. Indeed the CIA has used the Act effectively and as of May 1980, not one sentence has been released to the public under a court order in circumstances where the CIA has argued that release could injure the national security.

-- The problem as the CIA candidly admits is really one of "perception" or "misperception" on the part of foreign intelligence officers and foreign sources of information that secrets are not protectable under the FOIA. But this misperception cannot be solved by amending the FOIA since

the perception is also based on fears of leaks, congressional oversight, the publication of CIA memoirs (censored and uncensored), civil lawsuits, CIA abandonment of its agents and allies in Vietnam and elsewhere, and other factors having nothing to do with the FOIA. Moreover, even as the problem relates to the FOIA, it could only be solved by a total exemption and not even by the drastic surgery proposed by the Administration.

-- The CIA overstates the administrative costs and burdens that the new exemption would save or reduce. The Deputy Director of the CIA, Mr. Frank Carlucci testified before this committee that only 15 to 20 percent of current requests for information from the Agency would be affected by the exemption and that exaggerates the saving.

-- More important, the CIA understates the adverse impact of the exemption on the public's right to know. Considerable amounts of information regarding CIA and other intelligence operations have been released by the CIA under the FOIA. Through the FOIA, the public has learned more about the Bay of Pigs invasion, mind-drug experiments, and CIA spying on Americans. Much of the information was not included in congressional reports on the CIA and some of it makes clear that CIA operations were more extensive than official investigations had indicated.

-- Congressional oversight is no substitute for public accountability of the CIA under FOIA. The CIA says it

is willing to give all information to the Congress for purposes of oversight and that this is further reason for granting the exemption. Yet disclosures under the FOIA have shown that the CIA did not turn over all information about past operations to the Congress and congressional committees have not always made relevant information available to the public. The FOIA has independently added to the public record of the agencies.

Let us turn now to the importance of the FOIA to the ability of public interest groups to monitor the activities of the CIA.

The Center for National Security Studies has made extensive use of the FOIA in seeking to learn about the activities of the CIA and other intelligence agencies and to supplement the information provided to Congressional committees and made public by those committees.

On February 19, 1975 when the 1974 amendments to the FOIA went into effect we filed some 5 requests with the CIA. A few months later we filed four lawsuits for documents withheld by the CIA and other agencies. Since then we have made more than 50 requests and filed some 15 lawsuits on behalf of the Center and other groups through our litigation project, the ACLU Project on National Security. We regularly review documents released by the CIA and other agencies to determine what new information they contain. Summaries are printed in our monthly, First Principles, and in a CNSS report, From Official Files, which is regularly updated and widely reprinted. We would

ask, Mr. Chairman, that the CIA section of the latest edition be included as an appendix to our statement since it provides documentation for the position that much of value is released under the FOIA.

We also make use of documents released under the FOIA in litigation and in testimony which we present regularly at the requests of a number of congressional committees including the House and Senate Intelligence Committees. The documents are also used in CNSS reports and in books and articles written by the CNSS staff.

Put simply, the FOIA is essential to the activities of CNSS. The amendment proposed by the Administration -- indeed any amendment which did not provide for full judicial review would be fatal to the effective functioning of the Center and we believe to all efforts on the part of citizen groups to monitor the activities of the CIA and to participate in the process of developing charters and monitoring compliance with them.

Let us explain.

Prior to 1975, the CIA was essentially exempt from the FOIA. When we or others made requests to the Agency we were told that all of its files were classified and were exempt from disclosure by statute. The Agency was essentially free to determine what to release and what not to release. What it released was essentially self-serving.

For example, in one of his few public statements, CIA Director Richard Helms told the American people that the CIA did not

spy on Americans; he repeated the same information before the Senate Foreign Relations Committee. When he made those statements there was no way that anyone could test their accuracy.

One of the first documents which CNSS requested was the so-called Vail Report prepared by William Colby, then the CIA Director, for President Ford, describing the CIA's surveillance of Americans in light of the New York Times story reporting what it called a massive illegal surveillance program. The CIA refused to release a word of the report or its appendices. After we sued and on the eve of a deposition of a senior CIA official, the entire report was released.

When asked at the deposition why the CIA had believed that it could withhold the entire report the CIA official explained candidly that it was the "policy" of the agency not to discuss its activities in the United States or its surveillance of Americans. That "policy" ended that day. It would, we suggest, be reinstituted the day that Congress passes the kind of sweeping amendment that the CIA seeks.

One of the things which suggests that the CIA would revert to its old ways is its continued refusal to release material related to the surveillance of Americans unless it is specifically demanded under the FOIA. One very recent example will suffice.

Executive Order 12036 under which the CIA conducts surveillance of Americans requires the agencies to develop implementing directives

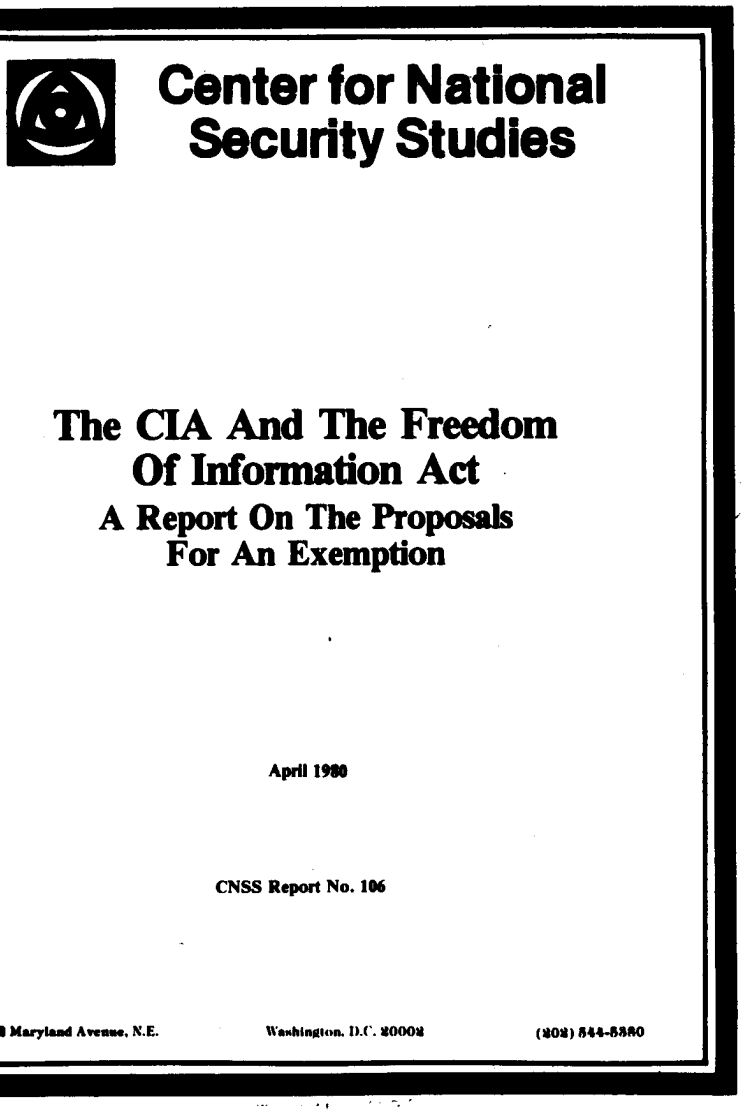
and secure approval for them from the Attorney General. The CIA drafted such guidelines and they were approved in August of 1979. Yet despite the fact that the guidelines are unclassified the CIA neither made them public nor even announced they existed. When asked to release them the agency declined to do so until a formal request was made under the FOIA. Even then the agency did not release all of the guidelines -- a matter we are continuing to explore with the agency.

The importance of the FOIA to supplement the reports of congressional committees can be illustrated by the information which has been released under the FOIA related to the CIA's use of academics. The Church Committee discussed current CIA practice only in the most elliptical manner while calling upon universities to establish guidelines to control what the committee described as a threat to the integrity of American universities. Our FOIA cases have pried loose some additional details about the program of secret relations with university professors to assist the CIA in recruiting foreign students. We believe that we are entitled to know much more about these programs and have two cases pending in the courts, but even what has been released so far has been of great value in alerting professors and universities to the issues and in enabling them to participate in the current debate about whether such use should be prohibited in the intelligence charter.

Mr. Chairman, we do not want to leave this subcommittee with the mistaken impression that the FOIA is functioning as well as it should. Indeed, we believe that the Agency is deliberately delaying responding to requests not only from CNSS but from other users in the hope that Congress will amend the Act and free it from the requirement to search, review and to submit documents for judicial review. We have recently filed a lawsuit making this allegation. A copy of the complaint is attached to our statement.

Finally, Mr. Chairman, we wish to underscore the essential role which judicial review plays in the process. It is not that courts will often or even perhaps ever order the Agency to release material. Rather it is that the knowledge that a judge may examine material in camera leads the Agency, its attorneys, and the Justice Department attorneys, to take a hard look at the requested material and to decide if its withholding is really justified. In requiring such judicial review in 1976 Congress took a great step forward. The record since then amply demonstrates the importance of that change in the law and there is nothing in the record to show that it has harmed the national security. As a result of the 1974 amendments we believe that the CIA is a better institution and that it is more responsive to the dictates of the Constitution. We urge you not to change that situation. The law should, in our view, be left as it is and the agency should be urged to more fully comply with its letter and its spirit.

We would now be happy to respond to any questions you may have.



Center for National Security Studies

The CIA And The Freedom Of Information Act

A Report On The Proposals For An Exemption

April 1980

CNSS Report No. 106

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THE CIA AND THE FOIA

A REPORT

ANALYZING CIA PROPOSALS

TO EXEMPT MOST

AGENCY FILES FROM THE

FREEDOM OF INFORMATION ACT

April 2, 1980

Prepared by The Center for
National Security Studies

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PREFACE

In testimony before the Administrative Practice and Procedures Subcommittee of the Senate Judiciary Committee in 1978 John Blake, the career CIA official in charge of FOIA requests, in a prepared statement said the following about the CIA and the FOIA:

> But, as you gentlemen well know, there is an inherent tension between the needs of an open society and the requirements of a secret intelligence organization. I feel very strongly that these two opposing needs must be reconciled. Let me be frank. The 1974 amendments to the FOIA and the ensuing public interest constituted a somewhat traumatic experience for a national intelligence officer who had been trained and indoctrinated to conduct his work in secrecy. These amendments required a considerable adjustment in attitude and practice.
>
> As chairman of the Agency Information Review Committee, I am responsible for the implementation of the act in the Agency. I am proud to say that my colleagues have worked very hard during these past 30 months to make the act work according to the letter and spirit. We have been able to make the necessary adjustments. I am pleased to report, that, in fact, I think the Agency is better off for it.

Freedom of Information Act Hearings before the Administrative Practice and Procedures Subcommittee, Senate Judiciary Committee, 95th Cong. 1st Sess. (1978), p. 69.

Since then Mr. Blake has retired and the CIA has changed its view. This report seeks to demonstrate that Mr. Blake was correct in 1978 and what he said remains true today. Congress in 1974 created the means for citizen review of the CIA and other national security agencies. These amendments were fully in the spirit of the First Amendment's commitment to open and robust debate. They have amply demonstrated their value and should not be abandoned now.

The concern of a broad range of groups and individuals is shown by the joint letter distributed by the Campaign for Political Rights and signed by more than 150 organizations and prominent individuals (See Appendix F).

The FOIA has been indispensable to the work of the Center for National Security Studies in serving as a watchdog of the CIA and other intelligence agencies.

An Act which has done so much good and no discernable harm should be strengthened and not abandoned.

Morton H. Halperin
Director
Center for National Security Studies

Washington, D.C.
2 April 1980

Introduction & Summary

The CIA is asking the Congress to grant it and other intelligence components designated by the Director of Central Intelligence an almost total exemption from the disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552, (FOIA or Act). Legislation drafted by the CIA which would create such an exemption has been introduced in both houses of the Congress (S. 2216 and H.R. 6316). An exemption just for the CIA is included in S. 2284, (The National Intelligence Act).

The CIA has not demonstrated a need for the broad exemption it seeks or shown that the "relief" it requests will in any way remedy the problems it ascribes to the working of the FOIA. The measure will, however, increase secrecy, reduce public accountability of the CIA, and drastically curtail the flow of valuable, non-sensitive information concerning agency policy and operations that is so essential to informed public debate.

This report demonstrates that the CIA has not made a convincing case for changing the disclosure requirements for the CIA and other intelligence units under the FOIA. As the memorandum makes clear:

> -- The intelligence community has ample authority under the current FOIA to protect classified information and intelligence sources and methods. Indeed the CIA has used the Act effectively and as of March 1980, not one sentence has been released to the public under a court order in circumstances where the CIA has argued that release would injure the national security.

-- The problem as the CIA candidly admits is really one of "perception" or "misperception" on the part of foreign intelligence officers and foreign sources of information that secrets are not protectable under the FOIA. But this misperception cannot be solved by amending the FOIA since the perception is also based on fears of leaks, congressional oversight, the publication of CIA memoirs (censored and uncensored), civil lawsuits, CIA abandonment of its agents and allies in Vietnam and elsewhere, and other factors having nothing to do with the FOIA.

-- The CIA overstates the administrative costs and burdens that the new exemption would save or reduce. The Deputy Director of the CIA, Mr. Frank Carlucci recently testified before the House that only 15 to 20 percent of current requests for information from the Agency would be affected by the exemption.

-- More important, the CIA understates the adverse impact of the exemption on the public's right to know. Considerable amounts of information regarding CIA and other intelligence operations has been released by the CIA under the FOIA. Through the FOIA, the public has learned more about the Bay of Pigs invasion, mind-drug experiments, CIA spying on Americans. Much of the information was not included in congressional investigations of the CIA and some of it makes it clear that CIA operations were more extensive than official investigations had indicated.

-- Congressional oversight is no substitute for public accountability of the CIA under FOIA. The CIA says it is willing to give all information to the Congress for purposes of oversight and that this is further reason for granting the exemption. Yet disclosures under the FOIA have shown that the CIA did not turn over all information about past operations to the Congress and congressional committees have not always made relevant information available to the public. The FOIA has independently added to the public record of the agencies. Moreover, the CIA, while arguing for congressional oversight as a substitute for the Act, is resisting legislation that would insure that the Congress is fully and currently informed about all CIA operations.

The Current State of the Law

The CIA must now respond to requests under the FOIA from any "person" by searching its files for the requested documents,

reviewing them to remove sentences and paragraphs which are exempt from disclosure, and releasing the remainder. It is free to charge search and copying fees unless "furnishing the information can be considered as primarily benefiting the general public." 1/ Although the Act requires the CIA and all agencies to respond to requests in 10 days and to appeals in 20 the CIA almost always takes considerably longer. 2/

The CIA can rely on all of the first seven exemptions to the FOIA, but in practice most of its withholding is based on the first exemption for national security information, on two so-called (b)(3) statutes which apply to the Agency, and on exemption 6 which protects personal privacy. 3/

The first exemption to the FOIA provides that the agency may withhold information which is properly exempt under the Executive Order on Classification. 4/ Under the cases interpreting the (b)(1) exemption the CIA, to withhold information, must determine that the release of the requested information could reasonably be expected to cause "identifiable damage to the national security." If a suit is filed for the requested documents the court must determine for itself that the documents are properly classified, i.e., that release could reasonably be expected to cause identifiable damage and that the procedures of the Executive Order have been followed. The CIA can seek to persuade the court that the documents are properly classified by submitting public affidavits. If that effort is not successful

the CIA can submit secret affidavits to be examined by the court alone or the court can examine the documents itself to determine if they are properly classified. 5/

In only one case has the CIA been ordered to release information which it asserted was classified. 6/ Some three or four lines were ordered released. Since that case, Holy Spirit Assoc. v. CIA, Civ. No. 79-0151 (D.D.C. July 21, 1979), is on appeal it remains true (as of April 1, 1980) that not a single sentence from a CIA classified document has been released under a court order in an FOIA case. 7/ The government would, of course be free to seek Supreme Court review were the Court of Appeals to sustain the District Court decision.

Wholly apart from the first exemption, the CIA can withhold material under the third exemption which permits the withholding of information if Congress has passed a statute which authorizes such withholding. That exemption, as amended by Congress in 1976 reads as follows:

> "specifically exempted from disclosure by statute, provided that such statute (A) requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld."

Two CIA statutes have been held to fit these criteria and to be (b)(3) statutes that permit withholding. One of these, 50 U.S.C. 403(d)(3) reads as follows:

"the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure."

The Court of Appeals for the D.C. Circuit has held that the section is a (b)(3) statute but that its scope is limited to the withholding of information whose release could lead to the disclosure of CIA sources and methods. Phillippi v. CIA, 546 F. 2d. 1009, 1015 n. 14 (D.C.Cir. 1976). In such cases the court noted that the information would also be properly classified and hence that the two CIA exemptions usually merge.

One difference is that when the CIA relies on 403(d)(3) it need not follow the procedural requirements of the Executive Order. Another is that the CIA has successfully invoked this exemption to withhold domestic sources whose identity is not properly classified under the Executive Order. While courts have upheld this use one court has ordered the release of information said by the CIA to be covered by this statute. Since that case, Sims v. CIA, Civ. No. 78-2551 (D.D.C. order Aug. 7, 1978), is also under appeal there has been no court ordered release of information whose release the CIA claimed would reveal intelligence sources or methods.

This statutory authority to withhold information is repeated in S. 2284, Sec. 412(e)(4), without change. Since the CIA is not seeking expansion of its authority under this provision and critics are not proposing to cut it back, there does not appear

to be any controversy about this provision as it relates to the FOIA. 8/

The other statute on which the CIA relies for withholding information is 50 U.S.C. 403(g). That statute reads as follows:

> "In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 403(d)(3) of this title that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of section 654 of Title 5, and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency: Provided, That in furtherance of this section, the Director of the Bureau of the Budget shall make no reports to the Congress in connection with the Agency under section 947(b) of Title 5, June 20, 1949, c. 227, § 7, 63 Stat. 211."

That statute has been construed to fit within the criteria for a withholding statute under the FOIA and the CIA need not prove that release of identifying information about is personnel would adversely affect its activities or reveal sources and methods. Baker v. CIA, 580 F.2d. 664 (D.C.Cir. 1978). However, the Court of Appeals has also held that the statute is limited to information about CIA personnel and structure and does not extend to its activities. Phillippi v. CIA, 546 F.2d. at 1015 n. 14.

To summarize: the CIA can now withhold any information which is properly classified, any information which would reveal intelligence sources or methods and any information relating to its personnel, and any information whose release

constitutes an unwarranted invasion of personal privacy. These exemptions are sufficient to have enabled the Agency to withstand all but a small number of challenges in court. At the same time, much important information has been released.

The CIA Proposal

The CIA proposal for amending the FOIA is included in bills introduced in both houses of Congress. (S. 2216 and H.R. 6316). A similar provision is included in the comprehensive charter proposal (S. 2284). 9/ (See Appendix A for the texts of these proposals.) The main difference is that S. 2284 limits the new procedure to the CIA while the other bills permit the Director of Central Intelligence (DCI) to designate other intelligence components which require this authority.

The CIA proposal would constitute a fundamental departure from the principles of the FOIA. It does not seek to change the standard for withholding particular documents. Rather it seeks to exempt most of the files of the CIA from all of the procedures of the FOIA for all time.

Under the proposal the DCI could designate files of the CIA and other intelligence agencies related to such matters as covert collection, special activities, counterintelligence, or technical collection. Files so designated would be totally exempt. The Agency would not be obliged to search its files for relevant documents; it would not be required to review documents line

by line or to release non-exempt segragable portions; it would not be subject to court orders requiring a detailed indexing of the withheld material.

The CIA could simply respond to a request by asserting that the requested information, if it existed, would be in the exempt files. It will be free of the obligation to search or to review files.

Moreover, the section is written so as to insure the CIA's continued exemption from any new requirements Congress might add to the FOIA. For example, in 1976 Congress amended the third exemption to the FOIA and thereby established more stringent criteria for other statutes which authorized withholding information. That amendment affected the CIA as well as other agencies. The proposed CIA amendment would exempt the CIA from the standards of the 1976 amendment and from any limitations contained in any future amendment to the FOIA.

The only exception to the exclusion of all CIA operational files from the FOIA is that Americans could ask the CIA for files pertaining to themselves. The CIA could continue to withhold information from personal files under its existing exemptions but it would at least be required to search for, to review, and, in a lawsuit, to itemize what material it has. However, the scope of this personal files exception would be relatively narrow. An individual might get his or her own file but not

the general files of the program under which the surveillance was conducted. Thus, for example, under the proposed section an individual who was the target of Operation CHAOS (the CIA surveillance of the anti-war movement) could get some of his or her own files but not the general files on the CHAOS program or the files on a particular organization in which the individual was active and which was a target of CHAOS. Moreover, CIA regulations relating to surveillance of Americans would also be exempt.

The only CIA documents which would remain fully subject to the FOIA would be what the Agency refers to as "finished intelligence." These are studies or reports on such topics as oil supplies. Such reports are generally written in the "overt" or "analytic" side of the Agency, formerly known as the Deputy Directorate for Intelligence (DDI), and now known as the National Foreign Analysis Center (NFAC). Such studies draw on information from human and technical sources but are generally written to disguise the sources of the information. These reports are useful to learn the CIA's views about the world but they reveal little about the operational activities of the Agency.

The CIA Case for Its Proposal

In testimony before the Subcommittee on Individual Rights of the House Government Operations Committee, former Ambassador Frank Carlucci, now the Deputy Director of Central Intelligence,

spelled out the CIA case for these sweeping proposals.

In that testimony Ambassador Carlucci emphasized that "the problem can best be examined as a matter of perception:" CIA sources believe that as a result of the FOIA the CIA cannot protect its agents. 10/

He argued that an intelligence service cannot function if it is subject to the disclosure rules that apply to the rest of the government.

The CIA position can best be understood by quoting from the February 20th testimony:

> "My theme today, therefore, is that the current application to the CIA of public disclosure statutes like the Freedom of Information seriously damage the Agency's ability to do its job. * * * * * * * * * * *
>
> -- Under the current Freedom of Information Act, national security exemptions do exist to protect the most vital intelligence information. The key point, however, is that those sources upon whom we depend for that information have an entirely different perception. Admittedly, this perception arises from more than the FOIA. * * * * * * *
>
> The Freedom of Information Act, however, has emerged as a focal point of the often-heard allegation that the CIA cannot keep a secret, that is, cannot properly protect its information from public disclosure. It has, therefore, assumed a larger than life role as a symbol of this nation's difficulty in keeping confidences inviolate. The perception held by those who would only enter into arrangements with us on a confidential basis is something we cannot ignore. * * * * * * * * * * * * * * * * * * *
>
> It is virtually impossible for most of our agents and sources in such societies to understand the law itself, much less why an organization such as the Central Intelligence Agency, wherein reposes their identities and the information they have provided, should be subject to the Act. We constantly witness sensational news articles describing CIA information detained under FOIA. It is difficult, therefore, to convince one who is secretly cooperating with us that someday he will not awaken to find in a U.S. newspaper or magazine information which he has furnished to the Agency which can be traced back to him. *

Although we assure these individuals that their information is and will continue to be well protected, we have on record numerous cases where our assurances have not sufficed. Foreign agents, some very important, have either refused to accept or have terminated a relationship on the grounds that, in their minds -- and it is important whether they are right or not -- but in their minds the CIA is no longer able to absolutely guarantee that information which they provide the U.S. government is sacrosanct. Again, we believe we can keep it so, but it is, in the final analysis, their perception -- not ours -- which counts. *

The FOIA also has had a negative effect on our relationships with foreign intelligence services. As I noted in my testimony last April, the chief of a major foreign intelligence service sat in my office and flatly stated that he could no longer fully cooperate as long as CIA is subject to the Freedom of Information Act. Likewise, a major foreign intelligence service dispatched to Washington a high ranking official for the specific purpose of registering concern over the impact of the FOIA on our relationship. I strongly argued that we had adequate national security exemptions. While admitting awareness of these exemptions, this representative correctly noted that even information denied under the exemptions was subject to later review and possible release by a U.S. Court. *

Finally, it is not only foreign sources of intelligence information that feel threatened by the FOIA's applicability to the Central Intelligence Agency. The FOIA has impacted adversely on our domestic contacts as well. * * * * * * * * *

While the vast majority of CIA information is properly secret, efforts to excise these secrets from documents in response to FOIA requests produces fragmented information which is often out of context, and therefore misleading. Often such fragmentary information released under FOIA has been embellished with conjecture to produce sensational but misleading or fallacious stories."

The Case Against Sweeping Amendment

The CIA concedes one part of the case against amendment.

It agrees that the exemptions now in effect provide ample authority

to withhold any information which needs protection in the interests of national security. The CIA argues, however, that it needs a new exemption in order to be able to assure other intelligence services and potential foreign sources that it will be able to protect information provided in confidence. The CIA also argues that the Act is an administrative nightmare which produces no benefit for the public, despite all of the hours spent by CIA employees, because nothing of value is ever released. These arguments are considered in turn.

Reassuring Intelligence Services and Sources

There is no reason to doubt the CIA claim that some friendly intelligence services and sources are somewhat leery about cooperation with the CIA because so much information has been made public about the agency in the past few years -- in some cases without the consent of the Agency. It is also possible that some of these sources have referred to the FOIA as the problem. However, as the CIA admits, the FOIA is not the sole or even leading cause of the problem. The solution as it relates to the FOIA is to explain to potential sources that the FOIA has not been the source of the disclosures to which they may object and that the CIA has every reason to be confident that it will be able to continue to withhold such information.

The CIA may be reluctant to explain to its sources and cooperating intelligence services that there are other procedures not entirely under its control which have and might well in the

future lead to the disclosure of information over the objections of the CIA. Although the CIA is attempting to deal with some of these problems others will remain intractable.

The various means by which information about the CIA has become public over the objections or without the consent of the agency include the following:

-- Leaks. The press is much more willing than it was 10 years ago to publish information about the CIA. Officials in the intelligence community and elsewhere in the administration continue to leak such information.

-- Damage Actions. Individuals whose rights are damaged by actions of CIA officials can bring suit against the United States under the Tort Claims Act or against individual officials under the Constitution. Such actions against the CIA have been sustained and have led to the release of information about CIA programs as well as information in individual files of Americans. 11/ The CIA has not sought exemption from such suits.

-- Former Officials. More than 100 former officials are now writing their memoirs. Some may do so without clearing the manuscript with the Agency, 12/ others will submit for clearance but even so information may be inadvertently released. 13/ Moreover, many CIA officials have given interviews without Agency clearance to those writing books about the Agency revealing information that the CIA would not clear for publication. 14/ None of this is likely to stop.

-- Spies. The CIA appears to have a better record at preventing the penetration of the Agency by spies at high or low levels than most if not all of the intelligence services said to be complaining about its security. Nonetheless as the recent Kampiles and Boyce cases demonstrate the Agency is not entirely immune to penetration by hostile intelligence services and can give no guarantees.

-- CIA Disavowal of Its Agents. Several times in the past few years the CIA has gotten into relations with groups or individuals and then pulled out leaving the individuals

exposed. The most notorious case was the exodus from Vietnam. The CIA not only failed to take those Vietnamese who had cooperated with the Agency out of the country as it had promised but it left behind records which identified them to Hanoi as CIA collaborators. 15/ Other such episodes occurred with the Meo Tribes in Laos and the Kurds in the Middle East. 16/

An agency that behaves in this way whether under orders from above or on its own might well expect others to hestitate about cooperating with the agency.

-- Congress. The Senate and House Intelligence Committees now operate under procedures which lead them to be briefed in great detail about current CIA operations. The committee rules provide that either house can make information public even if the President objects. All of these provisions are incorporated into S. 2284. While neither house has yet even considered exercising this power its presence would stand in the way of an iron-clad CIA guarantee to its sources.

Moreover, even the sweeping amendment proposed by the CIA would not solve the perception problem such as it is. The CIA could still not give any absolute assurance that no information would be ordered released by a court which would expose a secret source or reveal a relationship with a foreign intelligence service. Such information might be included in the personal file of an American which would still be subjected to the current procedures of the FOIA or it might be deduced from information in a finished intelligence report which would likewise remain subject to the Act. 17/ Even information which the CIA said was in files now exempt from search and review would be subject to court review to determine if the designation was correct. Thus the CIA could not give a flat assurance to

potential agents nor could it withstand a challenge from lawyers from friendly intelligence services who would argue that the CIA still could not give the absolute assurance that the Agency says they seek.

If the CIA is to solve what it says is the problem it would require a complete and absolute exemption from the Act in all respects. That it is not seeking.

Nothing of Importance is Released

The CIA assertion that no information of any importance is ever released as a result of FOIA requests is simply false. Many important books and articles have made use in varying degrees of information released by the CIA under the FOIA. (See Appendix B) Many important documents have been released under the Act. (See Appendix C)

The more refined version of the CIA argument, apparently developed in response to the circulation of such books and documents lists, is that all of the information of value that was released was made public only because it simply confirmed information that was in the Church Committee Report and other congressional studies. That also is not the case. Even where documents released related to subjects touched on in the Church Committee Report the new releases have thrown additional light on such important subjects as CIA drug testing, spy operations against Americans labeled MERRIMAC and RESISTANCE, CIA covert

actions in Chile, CIA relationships with journalists and academics and with local police departments. 18/ In some cases they have contradicted the congressional reports. Moreover, historians find it useful and even necessary to have access to the actual documents and such documents can be a very valuable tool for bringing home to students and others the reality of past abuses. 19/

Moreover the CIA to its credit has made public many documents relating to subjects simply not covered by the congressional investigations. These include: The CIA's delimitation in agreement with the FBI concerning activities in the U.S.; the purported legal basis for the Agency's covert propaganda, sabotage and paramilitary operations; internal discussions of CIA activities in Laos in 1969; use of satellite photography to spy on domestic demonstrations; attempts to keep the story of the Glomar Explorer out of the press.

Those seeking to perpetuate public debate about the role of the CIA use the Act regularly and are fighting its amendment not because they want to tie up a very small percentage of the CIA staff in dealing with their requests but because they have secured and expect to continue to secure the release of documents of great value to that public debate. 20/

The CIA also argues that the FOIA was useful in the past when the Agency was not under effective monitoring by Congress

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and internal mechanisms. It suggests that public oversight via the FOIA is no longer necessary. Senator Huddleston in introducing S. 2284 indicated that he would be opposed to any CIA relief from the FOIA except in the context of a comprehensive charter. However, even if Congress enacted such a charter and it was shown to be operating effectively for a number of years citizens should still be entitled to secure the release of documents under the FOIA. Perhaps at some future time a narrowly tailored change would be appropriate.

How the FOIA Operates

The apparent paradox -- that information has never been ordered released by a court yet the FOIA has nonetheless led to the publication of much information about the agency which would not otherwise have been made public -- can be explained by examining the process which a request undergoes.

When a request is made for a file, it is pulled and examined to determine if there is any information in the file which either must be released because it is not exempt or should be released as a matter of policy. Often this is the first time that anyone has looked at the file, even if it is many years old, to determine if any of it can be made public.

Some material is often then released. If the requester is not satisfied he or she can appeal. In that case the documents are examined by another group of more senior officials including lawyers familiar with the requirements of the Act. Often there are then substantial additional releases. 21/

If the requester is still not satisfied and has the resources to persue the matter, a lawsuit is filed. A new review then takes place. Others look at the documents including lawyers in the Department of Justice or the U.S. Attorney's office. As a result additional releases are often made; still more material is often released when a detailed index of the withheld material is prepared. Other releases occur before and even after district court, and even Court of Appeals arguments and decisions.

A request for documents relating to the CIA effort to suppress the Glomar Explorer story illustrates this process in graphic form. The CIA initially maintained that it could not even admit that it had any such documents. Although the district court accepted this argument, the Court of Appeals sent the case back after expressing scepticism. After reconsidering the government made public a set of documents shedding important light on the relationship between the CIA and the press. 22/

Administrative Burden

In his testimony Ambassador Carlucci devotes many pages to complaining about the administrative burden posed by the Act and suggesting that relief is necessary for that reason as well as the others presented. 23/ The CIA argument on administrative burdens is wide of the mark on two grounds:

-- The CIA burden is not greater than many other agencies which are not seeking relief.

-- Despite the wide scope of the exemption sought by the CIA, it would not reduce the burden of the Agency very substantially.

The CIA according to Ambassador Carlucci has received over the past four years an average of 4,744 FOIA, Privacy Act and Executive Order declassification requests per year. It currently has a backlog of over 2,700 unanswered requests and the figure he says is increasing. 24/

By contrast in 1977 (the last year for which comparable data are available) the Department of Defense received 47,000 requests, the Department of Justice 19,000 and the Treasury Department, 16,000.

The CIA estimated its incremental cost for processing FOIA requests in 1977 at $1 million (and $1.366 million in 1978). The Defense Department spent more than $5 million in 1977 as did HEW and Treasury. Even the Department of Transportation spent more than the CIA. 25/

Since the CIA declines to make its total budget public it is impossible to tell if the proportion spent on FOIA is any higher. However, the figures do not appear to be out of line. Nor is there any reason to believe that comparative figures for later years would be any different.

The CIA also objects to having to respond to requests from the KGB and from those out to abolish the Agency such as Philip Agee. The KGB argument is theoretical since there is no

evidence that the CIA has received any requests from a hostile intelligence service. There would be little objection to permitting the CIA to summarily deny such requests. The problem is that a foreign intelligence service could easily arrange with any American to make its requests.

As for Agee, the complaint is clearly misplaced. Certainly the CIA should not be able to turn aside requests because it objects to the political views of the requester. The CIA asserts that Agee intends to use the information released to hurt the CIA. The Agency can, of course, withhold any information which is properly classified or which would reveal sources and methods. Agee, like any other citizen, is free to use whatever is released. Moreover since Agee has requested only his personal file the CIA would still have to answer his request even if its proposed amendment were passed. 26/

If the CIA burden is not overwhelming the CIA proposal would have little effect on it.

The CIA Annual Report for 1978 under the FOIA indicates that only some 20-30% of requests to the CIA would be covered by the proposed amendment. More than 50% of the requests to the CIA in 1978 were for personal files and would not be affected. Another 10% are requests under the mandatory review positions of the Executive Order on Classification. 27/ Some 10%, according to Ambassador Carlucci's testimony, are for the finished

intelligence product. Thus the CIA administrative burden would not be greatly reduced but the public would be denied access to important information. Most of the important information which is released falls within this 20-30%. If the proposed CIA amendments were adopted the perception problem would remain and the administrative burden would remain but the public would learn much less about the CIA.

FOOTNOTES

1. 5 U.S.C. 552(a)(4)(b). The CIA often declines to waive fees and has twice been ordered to do so by district courts. See Eudey v. CIA, 478 F. Supp. 1175, (D.D.C. 1978), and Fitzgibbon v. CIA, No. 26-700 (D.D.C. Oct. 29, 1976) reprinted in Freedom of Information Act hearings before the Subcommittee on Administrative Practice and Procedure, Senate Judiciary Committee, 95th Cong., 1st Sess. (1978), p. 822.

2. CIA 1978 Annual Report on FOIA Administration, 2 April, 1979, p. 5, cited as CIA 1978 Report.

3. Id. at p. 1. In 1978 the CIA invoked exemption (1) 280 times, exemption (3) 408 times, exemption (6) 93 times and exemptions (2), (4), (5) and (7) a combined total of 31 times.

4. The order now in effect is E.O. 12065, 43 Fed. Reg. 28949 (July 3, 1978). The President could at any time change the criteria for withholding for all agencies or just for the CIA by amending the Executive Order.

5. Ray v. Turner, 587 F.2d. at 1194-95. See generally "Exemption (b)(1)" in Marwick (ed.), the 1980 Edition of Litigation Under the Federal Freedom of Information Act and Privacy Act, (Washington, D.C.: CNSS 1979).

6. In one other case a court ordered material released which the CIA asserted related to sources and methods but was not classified. (See p. 5)

7. As we explain below that does not mean that no important documents have been released as a result of FOIA requests or litigation but only that when the CIA held firmly to its view that information has been properly classified the courts have been reluctant, to say the least, to second guess such determinations.

8. Since the Supreme Court has interpreted that provision to authorize secrecy agreements, U.S. v. Snepp, 48 U.S.L.W. 3527 (dec. Feb. 19, 1980), there may be debate about its reenactment.

9. S. 2284 contains several additional provisions which would expand the right to withhold information requested under the FOIA. The first part of Sec. 421(d), for example, would greatly expand the existing Sec. 403(g) and could be read to exempt all information about CIA activity. It has apparently been modeled on PL 86-38 which has been interpreted to grant such authority to NSA. See Hayden v. NSA, 608 F.2d. 1381 (D.C.Cir. 1979). This report does not discuss these additional proposals.

10. Statement of Frank Carlucci, Deputy Director of Central Intelligence, before the Subcommittee on Individual Rights of the House Government Operations Committee, February 20, 1980, p. 3. See also Impact of the Freedom of Information Act and the Privacy Act on Intelligence Activities, hearings before the Subcommittee on Legislation, House Permanent Select Committee on Intelligence, 96th Cong. 1st Sess., April 5, 1979.

11. See e.g., in regard to the CIA mail opening program Birnbaum v. U.S., 588 F.2d 319 (1978) (tort claim) and Driver v. Helms, 577 F.2d. 147 (1st Cir. 1979) (constitutional claim), and with regard to Operation CHAOS, the surveillance of the anti-war movement, Halkin v. Helms, Civ. No. 75-1773 (D.D.C.).

12. See e.g., Frank Snepp, Decent Interval, (New York: Random House, 1978) and Joseph B. Smith, Portrait of a Cold Warrior, (Putnam, 1976).

13. Compare the French edition of William Colby's memoirs, Honorable Men, (New York: Simon & Shuster, 1978) with the American. The former contains information deleted from the latter as a result of the CIA clearance process. See C. Marwick, "The Growing Power to Censor," First Principles, June 1979, p. 3.

14. See e.g., Thomas Powers, The Man Who Kept Secrets, (New York: Knopf, 1979).

15. See generally Frank Snepp, Decent Interval, op. cit.

16. Report of the House Select Committee on Intelligence printed in Village Voice, Feb. 16, 1976, p. 85.

17. One of the few leaks on record which might have exposed a CIA agent was a report relating to Indian plans during the Bangladesh crisis. A finished intelligence report was leaked to a reporter who published the information. When the story was retold in the Powers' book, The Man Who Kept Secrets, op. cit., pp. 206-7, it was revealed that the source of the information could only have been a member of the Indian cabinet touching off debate and speculation in India about who the spy might have been.

18. See Operation CHAOS, Comparison of Documents Released In Halkin v. Helms With the Final Report of the Church Committee, CNSS Report No. 104, (Washington, D.C.: CNSS, 1979). See Appendix D.

19. See Christy Macy and Susan Kaplan, Documents, (New York: Penguin, 1980), which reproduces many documents. Some of these are from the CIA and were requested for the book even though most of the content of the document had already been made public. See Appendix E for an illustration.

20. See joint letter from 150 national groups and others at Appendix F. Is the CIA seeking sweeping amendments precisely because of this use? Is the agency in a clearly discernable slowdown in responding to requests from those it identifies as its critics for the same reason and in the hope that the passage of the proposed amendments will nulify the pending requests?

21. See Using the Freedom of Information Act: A Step by Step Guide, (Washington, D.C.: CNSS, 1979).

22. The documents are on file in the CNSS library.

23. See CIA 1978 Report, op. cit.

24. Carlucci, p. 22. See also CIA 1978 Report.

25. Harold Relyea, "The Administration of the Freedom of Information Act: A Brief Overview of Executive Branch Annual Reports for 1977," Congressional Research Service Report No. 78-195 Gov., Nov. 15, 1978.

26. CIA 1978 Report, op. cit.

27. Sec. 3-501 of E.O. 12065 provides that each agency shall establish a procedure for a mandatory review for declassification of any report that reasonably describes the information. Requests previously made under the FOIA could be made under the E.O. procedures if the CIA amendments have passed. This would necessitate the same search and review but the requester could not appeal an adverse decision to the courts.

APPENDICES

96TH CONGRESS
2D SESSION

S. 2216

SEC. 3. Section 6 of the Central Intelligence Agency Act of 1949 (50 U.S.C 403g), is amended to read as follows:

"In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 403(d)(3) of this title that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of any law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or number of personnel employed by the Agency. In furtherance of the responsibility of the Director of Central Intelligence to protect intelligence sources and methods, information in files maintained by an intelligence agency or component of the United States Government shall also be exempted from the provisions of any law which require the publication or disclosure, or the search or review in connection therewith, if such files have been specifically designated by the Director of Central Intelligence to be concerned with: The design, function, deployment, exploitation or utilization of scientific or technical systems for the collection of foreign intelligence or counterintelligence information; special activities and for-

eign intelligence or counterintelligence operations; investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources; intelligence and security liaison arrangements or information exchanges with foreign governments or their intelligence or security services: *Provided*, That requests by American citizens and permanent resident aliens for information concerning themselves, made pursuant to sections 552 and 552a of title 5, shall be processed in accordance with those sections. The provisions of this section shall not be superseded except by a provision of law which is enacted after the date of this amendment and which specifically repeals or modifies the provisions of this section.".

96TH CONGRESS
2D SESSION

S. 2284

Section 421(d)

421 (d) No provision of law shall be construed to require the Director of the Agency or any other officer or employee of the United States to disclose information concerning the organization or functions of the Agency, including the name, official title, salary, or affiliation with the Agency of any person employed by, or otherwise associated with the Agency, or the number of persons employed by the Agency. In addition, the Agency shall be also be exempted from the provisions of any law which require the publication or disclosure, or the search or review in connection therewith, of information in files specifically designated to be concerned with the design, function, deployment, exploitation, or utilization of scientific or technical systems for the collection of intelligence; special activities and intelligence operations; investigations conducted to determine the suitability of potential intelligence sources; intelligence and security liaison arrangements or information exchanges with foreign governments or their intelligence or security services; except that requests by United States citizens and permanent resident aliens for information concerning themselves, made pursuant to sections 552 and 552a of title 5, shall be processed in accordance with those sections.

Center for National Security Studies

122 Maryland Avenue, N.E. Washington, D.C. 20002 (202) 544-5380

Date: March 12, 1980

MEMORANDUM

SUBJECT: List of books and articles based entirely or partially on CIA documents declassified through the Freedom of Information Act.

CIA Activities Within the United States

Donner, Frank. *The Age of Surveillance.* New York: Alfred A. Knopf, Inc., 1980. (forthcoming)

Halperin, Morton H. et al. *The Lawless State.* New York: Penguin Books, 1976.

Wise, David. *The American Police State.* New York: Random House, 1976.

Horrock, Nicholas M. "New Law is Dislodging C.I.A.'s Secrets," *New York Times,* 5/14/75. (delimitation agreement between FBI and CIA; CIA file on Socialist Workers Party; CIA study of U.S. youth movement, *Restless Youth*)

Kihss, Peter. "Rosenberg Files of C.I.A. Released," *New York Times,* 12/5/75.

_____. "30 Accused in Suit of Opening Mails," *New York Times,* 7/23/75. (request for personal file reveals requester was target of CIA mail opening)

Knight, Althea and Bonner, Alice. "Fairfax, Montgomery List Aid Received From CIA," *Washington Post,* 1/14/76. (aid to police departments)

_____. "C.I.A. Documents Reveal Presence of Agents on 'Problem' Campuses," *New York Times,* 12/18/77.

Thomas, Jo. "C.I.A. Reporting on Student Group After Cutting Off Financial Help," *New York Times,* 12/18/77.

_____. "Cable Sought to Discredit Critics of Warren Report," *New York Times,* 12/26/77.

Richards, Bill. "CIA Infiltrated Black Groups Here in the '60s," *Washington Post,* 3/30/78.

Sommer, Andrew and Cheshire, Marc. "The Spy Who Came in From the Campus," *New Times,* 10/30/78.

Hersh, Seymour M. "C.I.A. Papers Indicate Broader Surveillance Than Was Admitted," *New York Times,* 3/9/79.

_____. "C.I.A. Used Satellites for Spying on Anti War Protesters in U.S.," *New York Times,* 7/17/79.

Volkman, Ernest. "Spies on Campus," *Penthouse,* October, 1979.

Foreign Policy

Cook, Blanche Wiesen. *Missions of Peace and Political Warfare: Eisenhower's Cold War.* New York: Doubleday, 1981. (forthcoming)

Morgan, Dan. *Merchants of Grain.* New York: Viking Press, 1979.

Shawcross, William. *Sideshow: Kissinger, Nixon and the Destruction of Cambodia.* New York: Simon and Schuster, 1979.

Wittner, Lawrence S. *The Americans in Greece: 1943-1949* New York: Columbia University Press, 1981. (forthcoming)

Wyden, Peter. *Bay of Pigs: The Untold Story.* New York: Simon and Schuster, 1979.

Bernstein, Barton J. "Courage and Commitment: The Missiles of October," *Foreign Service Journal,* December 1975, Vol. 52, no. 12.

Bernstein, Barton J. "The Week We Went to War," *Bulletin of the Atomic Scientists,* February 1976, Vol. 32, no. 2.

Bernstein, Barton J. "The Week We Went to War: American Intervention in Korea," *Foreign Service Journal,* January and February 1977, Vol. 54, nos. 1 and 2.

Bernstein, Barton J. "The Policy of Risk: Crossing the 38th Parallel and Marching to the Yalu," *Foreign Service Journal,* March 1977, Vol. 54, no. 3.

Bernstein, Barton J. "The Bay of Pigs Reconsidered," unpublished paper, 1980.

Burnham, David. "C.I.A. Said in 1974 Israel Had A-Bombs," *New York Times*, 1/27/78.

Pelz, Stephen. "When the Kitchen Gets Hot, Pass the Buck," *Reviews in American History*, December 1978.

Pelz, Stephen. "Truman's Korean Decision—June 1950," for International Security Studies Program, Woodrow Wilson International Center for Scholars, Smithsonian Institution.

Wittner, Lawrence S. "American Policy Toward Greece During World War II," *Diplomatic History*, Vol. 3, Spring 1979.

Behavior Control and Testing of Drugs and Biological Weapons

Marks, John. *The Search for the "Manchurian Candidate."* New York: Times Books, 1979.

Sheflin, Alan W. and Opton, Edward. *The Mind Manipulators*. New York: Paddington Press Ltd., 1978.

Watson, Peter. *War on the Mind*. New York: Basic Books, 1978.

Marro, Anthony. "Drug Tests by C.I.A. Held More Extensive Than Reported in '75," *New York Times*, 7/16/77.

Jacobs, John. "CIA Papers Detail Secret Experiments on Behavior Control," *Washington Post*, 7/21/77.

Horrock, Nicholas M. "Private Institutions Used in C.I.A. Effort to Control Behavior," *New York Times*, 8/2/77.

Horrock, Nicholas M. "Drugs Tested by C.I.A. on Mental Patients," *New York Times*, 8/3/77.

Jacobs, John. "Rutgers Received CIA Funds to Study Hungarian Refugees," *Washington Post*, 9/1/77.

Richards, Bill and Jacobs, John. "CIA Conducted Mind-Control Tests Up to '72, New Data Show," *Washington Post*, 9/2/77.

Reid, T.R. "Range of Mind-Control Efforts Revealed in CIA Documents," *Washington Post*, 9/23/77.

Horrock, Nicholas M. "C.I.A. Documents Tell of 1954 Project to Create Involuntary Assassin," *New York Times*, 2/9/78.

Wise, David. "The CIA's Svengalis," *Inquiry*, September 18, 1979.

"Open-Air Testing of Biological Agents by the CIA: New York—1956," American Citizens for Honesty in Government, December 5, 1979.

"Open-Air Testing of Biological Agents by the CIA: Florida—1955," American Citizens for Honesty in Government, December 17, 1979.

Espionage

Boyle, Andrew. *The Fourth Man*. New York: Dial Press/James Wade, 1979.

Smith, Richard Harris. *Spymaster's Odyssey: The World of Allen Dulles*. New York: Coward, McCann & Geoghegan, 1980. (forthcoming)

Miscellaneous

Corson, William R. *The Armies of Ignorance*. New York: Dial Press/James Wade, 1977.

Epstein, Edward Jay. *Legend: The Secret World of Lee Harvey Oswald*. New York: Readers Digest Press, 1978.

Macy, Christy and Kaplan, Susan. *Documents: A Shocking Collection of Memoranda, Letters, and Telexes from the Secret Files of the American Intelligence Community*. New York: Penguin Books, 1980.

Persico, Joseph E. *Piercing the Reich: The Penetration of Nazi Germany by American Secret Agents During World War II*. New York: Viking Press, 1979.

Weinstein, Allen. *Perjury: The Hiss-Chambers Case*. New York: Alfred Knopf, Inc., 1978.

NOTE: *This is a representative listing of books and articles based on CIA documents released through the FOIA, and is not intended to be exhaustive.*

Some releases to historians were made in response to declassification requests. Documents released in this manner are also available through the FOIA.

APPENDIX C

Center for National Security Studies

122 Maryland Avenue, N.E. Washington, D.C. 20002 (202) 544-5380

DOCUMENTS RELEASED THROUGH THE FREEDOM OF INFORMATION ACT

C. CENTRAL INTELLIGENCE AGENCY

C-1. COLBY REPORT: December 24, 1974; 64 pages. A letter from Colby to the President regarding a December 22, 1974 *New York Times* article revealing CIA domestic intelligence activities. Nine annexes are attached to the letter, which include discussions of the Huston Plan, interagency programs, a counterintelligence office, Schlesinger's request asking employees to report non-chartered CIA activities [may be ordered as C-5(e)], and a March 5, 1974 memo terminating Operation CHAOS. ($6.40/copy)

C-5. This series of documents (through C-5e) were referred to in a report on CIA domestic activities presented by Director Colby to the Senate Appropriations Committee on January 15, 1975:

C-5(a). ORGANIZATION AND FUNCTIONS, DOMESTIC OPERATIONS DIVISION AND STATION (DODS); February 11, 1963; 1 page. The mission of the DODS is described as "...cting, supporting and coordinating ...landestine operational activities . . . within the United States against foreign targets . . ." ($.10/copy)

C-5(b). REDESIGNATION OF COMPONENT; January 28, 1972; 1 page. An intra-agency memo from Thomas Karamessines, Deputy Director for Plans, announcing the change in the name of the Domestic Operations Division (DO) to Foreign Resources Division (FR). ($.10/copy)

C-5(c). CORRESPONDENCE BETWEEN DAVID GINSBURG, EXECUTIVE DIRECTOR OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, AND RICHARD HELMS, DIRECTOR OF THE CIA; August 29, 1967 and September 1, 1967; 3 pages. Contains a request by Ginsburg for information on any civil disorder intelligence the CIA may have, and Helms' reply. ($.30/copy)

C-5(d). RESTLESS YOUTH; September 1968, No. 0613/68; 41 pages. The report analyzes the international youth movement of the late 1960s, studies its sociological base, and attempts to understand its structure, purposes, goals, and possible ramifications. The report cites the Civil Rights Movement of the early 1960s as proving to dissidents later in the decade that confrontational politics is the only means of accomplishing political change. See also C-12(b) ($4.10/copy)

C-5(e). MEMORANDUM FOR ALL CIA EMPLOYEES FROM JAMES R. SCHLESINGER, DIRECTOR; May 9, 1973; 2 pages. The Director requests that all CIA personnel report to him any past or present activities which lie outside the Agency's charter, and directs that if an order is given to a CIA employee which is inconsistent with the Agency's charter, the employee should report the incident to the Director. See also C-1. ($.20/copy)

C-6. DELIMITATION AGREEMENT OF 1948; September and October 1948; 7 pages. The documents constitute an agreement between the FBI and the CIA permitting CIA contacts with émigré groups and individuals in the United States. ($.70/copy)

C-8. "POTENTIAL FLAP ACTIVITIES." MEMO TO WILLIAM COLBY FROM WILLIAM V. BROE, INSPECTOR GENERAL; May 21, 1973; 26 pages. The first portion of the Memo discusses CIA contacts with Watergate figures, and CIA participation in the Intelligence Evaluation Committee and Staff, established to evaluate domestic intelligence studies. The second portion of the Memo covers Support, Real Estate, Procurement, Cover, Activities Directed Against U.S. Citizens, and Collection Activities. ($2.60/copy)

C-10. FORMAL MEMORANDUM ON RESPECTIVE RESPONSIBILITIES OF THE FBI AND CIA IN THE UNITED STATES; February 7, 1966; 2 pages. This memo referred to on page 57 of the Rockefeller Commission Report. The memo contains no information not included in that Report. ($.20/copy)

C-12(a). FAMILY JEWELS—ACTIVITIES CONSTRUED TO BE OUTSIDE THE CIA CHARTER; May 1970 - May 1973; 65 pages. DCI James Schlesinger's directive of May 9, 1973 (see C-5(e)) requested CIA employees to report activities which could be considered outside the charter of the Agency. The request released this partial file of questionable activities, including domestic surveillance operations, arrangements with American firms, assistance to local police departments, and Office of Security support to the Bureau of Narcotics and Dangerous Drugs. ($6.50/copy).

*C-12(b). RESTLESS YOUTH; 1968; 245 pages. A version of the CIA's 1968 study of worldwide student dissidence which includes a 199-page section reporting on student movements in 19 foreign countries. Part I is identical to C-5(d) except that it includes some photographs and one paragraph deleted from that version. ($24.50/copy)

*C-12(c). "FAMILY JEWELS" MEMORANDA; 1968 and 1973; 18 pages. Memoranda to the DCI from various offices responding to his request that CIA activities which may be outside the Agency's charter be reported. The memoranda show that the Agency examined satellite photographs in analyzing domestic civil disturbances, that the Domestic Contact Service collects information on foreign students studying in the U.S., and that in 1969 and 1970 several studies were prepared on black radical movements in the Caribbean, one of which focused on possible links to the U.S. black power movement. ($1.80/copy)

*C-13/15. CIA/DOCUMENTS ON PROJECTS RESISTANCE AND MERRIMAC; 1966-1975; 1987 pages. Documents in this file, released to CNSS through the FOIA, contain a number of discrepancies from, or additions to, the account of the projects in the Rockefeller and Church Reports. These relate to the use of informants in Resistance; the scope of Resistance; the use of Army counterintelligence information in Resistance reports; a proposed expansion of Merrimac in 1968; and Merrimac operations outside the Washington, D.C. area. ($150.00; selected documents $3.50)

C-16. RESTRICTIONS ON OPERATIONAL USE OF ACADEMICS; 1970 and 1973; 8 pages. Tom Huston's 1970 memo informing DCI Helms that restrictions on domestic use of several intelligence gathering techniques had been lifted; and guidelines reprinted in 1973 prohibiting the Agency from covert funding of U.S. Educational or private voluntary organizations. ($.80/copy)

C-19. FILES ON CHE GUEVARA; 1958-1976; 184 pages. A request to the CIA for all files on Che Guevara and others produced responses from the State Dept., FBI, DIA, and Navy. The file includes accounts of Che's alleged activities in Cuba, Latin America, Africa and Vietnam; numerous false reports of his death; and several accounts of his capture and execution in Bolivia in 1967. ($18.40/copy)

C-21. TWO MEMORANDA FROM CIA GENERAL COUNSEL TO CIA DIRECTOR; up to January 1962 - April 1962; 8 pages. The three memoranda from CIA General Counsel Lawrence Houston to the Director discuss the legality of subversion and sabotage, and paramilitary cold-war activities. These memoranda argue that covert operations are legal despite the lack of congressional authorization in the 1947 NSC Act. ($0.80/copy)

C-22. NATIONAL INTELLIGENCE ESTIMATES RELATING TO THE CUBAN MISSILE CRISIS; October 19 and 20, 1962; 30 pages. These papers concern the problem of assessing the strategic and political implications of the Soviet military buildup in Cuba. They provide a history of the military buildup, discuss its implications, and note that the possibilities exist for an expansion of the buildup. The reports conclude that the Soviet objective is to prove that the U.S. can no longer prevent a Soviet presence in the hemisphere, and discusses the probable effect of a warning. ($3.00/copy).

C-24. CIA RELATIONSHIPS WITH THE UNIVERSITY OF CALIFORNIA; 1958-1977; 914 pages. Nathan Gardels received these files through requests and litigation under the FOIA. They document CIA relationships and contracts with UC for research in political science, Chinese and Slavic studies, physics, and other fields; CIA use of academic cover; and covert recruiting.

C-25. CIA RELATIONSHIPS WITH DOMESTIC FIRMS; 1975-1976; 67 pages. These documents, released in *Halperin v. CIA*, provide a limited look at the Agency's relationships with the Arnold & Porter law firm, hired to represent it during the 1973-1976 Senate investigation, and with Robert R. Mullen and Co. The CIA used Mullen Co., a public relations firm which hired E. Howard Hunt in 1970, for cover and other purposes. ($6.70/copy)

C-26. OSWALD AND THE CUBAN CONNECTION; April and May, 1975; 27 pages. This report represents a review of items in the CIA's Lee Harvey Oswald File "regarding allegations of Castro Cuban involvement in the John F. Kennedy assassination." The analysis was requested by the Rockefeller Commission. The report seeks, in part, to explain Oswald's "feelings toward and relations with Castro's Cuba." ($2.70/copy)

C-27. CIA DRUG EXPERIMENTS; up to July 25, 1975; 146 pages. A collection of 39 documents detailing various CIA projects relating to drug and behavioral experiments. The file includes some documents from the Frank Olson case (see C-35), as well as documents describing MKULTRA, the CIA's top-secret project to investigate "the manipulation of human behavior." The research is said to be "considered by many in medicine and related fields to be professionally unethical. A final phase of the testing of MKULTRA products places the rights and interests of U.S. citizens in jeopardy." ($14.60/copy) [The entire 40,000-page release of CIA behavior control documents is available by appointment for inspection at the CNSS Library.]

C-29. CIA ACTIVITIES IN LAOS: MEMO FROM CIA GENERAL COUNSEL TO DIRECTOR; October 30, 1969; 2 pages. The memo resulted from Senator Fulbright's assertion that the CIA is "waging war" in Laos. The General Counsel proceeded to inform the Director of CIA operations in Laos (which he characterized as assisting the native population to prevent a military takeover) and of the Agency's authority to carry out such operations. ($.20/copy)

C-30. PROJECT MUDHEN—GOVERNMENT INVESTIGATIONS OF JACK ANDERSON; 1972; 39 pages. This file includes a copy of the complaint Anderson filed against Nixon, Kissinger, Helms and several others. Also included is a paper, "Chronology of a Conspiracy," which summarizes the government's investigation of Anderson, and a series of five memos detailing certain aspects of Project MUDHEN including operations, logs, and photos. ($3.90/copy)

*C-31. DOCUMENTS REFERRED TO IN "COVERT ACTION IN CHILE 1963-1973"; September 1970 and undated; 11 pages. This file contains three CIA documents released to CNSS through the FOIA which describe events in Chile during September 1970. The reports concern alleged attempts by the Chilean Communist Party to take over media outlets, splits within the Christian Democratic Party, the growth of "Patria y Libertad," and Allende's character and career. ($1.10)

C-32. DIRECTOR OF CENTRAL INTELLIGENCE DIRECTIVES; 1946-1976; 285 pages. The directives are procedural memos from DCIs over a period of twenty years. They cover intelligence-related issues, including procedures for the Intelligence Advisory Committee, control of dissemination of foreign intelligence, security policy guidelines on liaison relationships with foreign intelligence organizations, recognition of exceptional service to the Agency, and exploitation of foreign language publications. Also included are directives relating to coordination of overt collection abroad, domestic exploitation of non-governmental organizations, and production of atomic energy intelligence. ($28.50/copy)

C-33. CIA DOCUMENTS ON THE DISAPPEARANCE OF PROFESSOR RIHA; April 1969 - August 1975; 230 pages. The disappearance in April 1969 of Dr. Thomas Riha, a naturalized U.S. citizen born in Czechoslavakia who was a professor of Russian history at the University of Colorado, caused considerable publicity, and prompted a CIA investigation. The documents concern the [redacted], unexplained disappearance and the subsequent involvement of University of Colorado President Joseph Smiley, local news reporters, and the CIA in investigations of the matter. Correspondence from William Colby to the Senate Intelligence Committee explains the limited role of the CIA in an affair that "was a domestic concern and beyond the jurisdiction and responsibility" of the Agency. News coverage concerning the disappearance is included. ($23.00/copy)

C-36. CIA MAIL OPENINGS; 1971-1973; 8 pages. The documents include two meetings conducted by CIA Director Helms on HTLINGUAL, the Agency's mail opening project, as well as a 1973 statement by Director Colby concerning termination of the project. The Helms memoranda explain the Agency's collaboration with the Postal Service and the FBI; participants in the meeting decided to continue the program despite reservations over possible adverse publicity and embarrassment should the mail opening scheme surface. The "memorandum for the record" signed by Colby expresses his desire to transfer the operation to the FBI and directs that "the project be suspended until appropriate resolution of the problems involved." ($.80/copy)

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C-37. CIA—JUSTICE DEPARTMENT AGREEMENT REGARDING INVESTIGATION OF POSSIBLE CRIMINAL ACTIVITIES ARISING OUT OF CIA ACTIVITIES; 1954-1975; 19 pages. The memorandum from Justice Department Counsel L.S. Houston to the Director of Central Intelligence explains the "balancing of interest between the duty to enforce the law . . . and the Director's responsibility for protecting intelligence sources and methods." Included is a brief summary of twenty cases in which violations of criminal statutes were reported to the Department of Justice between 1954 and 1975. A detailed examination of circumstances involved in the drug prosecution of Mr. Puttaporn Khramkhruan, former CIA employee, is also included. ($1.90/copy)

C-38. DIRECTOR OF CENTRAL INTELLIGENCE REPORT TO THE PRESIDENT CONCERNING DOMESTIC OPERATIONS; August 1967 - July 1975; 70 pages. The Director of Central Intelligence, with the approval of the President, released "the Director's report of 24 December 1974 to the President, including the annexes, covering matters related to the *New York Times* article of 22 December alleging CIA involvement in a massive illegal domestic intelligence effort. This release is a follow up to the decision to release the Rockefeller Commission report in view of the public interest in this matter." The breadth of the CHAOS operation is disclosed in the series of memoranda and briefing papers included in these documents. ($7.00/copy)

C-39. CIA CONTRACTS WITH THE UNIVERSITY OF CALIFORNIA-SAN DIEGO; 1966-1976; 121 pages. Copies of a negotiated contract between the CIA and U. of Cal. San Diego, describing completion dates, scope of work, location where research will be conducted, deliverable items and costs. The CIA contracts were for research in the field of image processing, a review of Soviet Geochemical Literature, and a study of agriculture in Communist China. ($12.10/copy)

C-40. THE CIA AND LOCAL POLICE; 1967-1973; 177 pages. A series of memos and letters concerning direct CIA assistance to 12 municipal and/or county police departments including those of New York, Los Angeles, Boston, and Washington. The documents trace the history of CIA training seminars in photo and audio surveillance, narcotics, and "radical terrorist" control. ($17.70/copy)

C-42. SECRET LEGISLATIVE HISTORY OF THE CIA; 1947-1948; 143 pages. These documents reveal the secret congressional testimony of the first two Directors of Central Intelligence, Lt. General Hoyt S. Vanderberg and Rear Admiral R.H. Hillenkoetter. Director Hillenkoetter's April 1948 testimony before the House Armed Services Committee describes the problems which the fledgling intelligence agency faced in its first two years. The Vandenberg testimony was presented to the Senate Armed Services Committee in April 1947 in support of the National Security Act of 1947 which provided for unification of the armed services and establishment of the CIA. ($14.30/copy)

*C-44. CIA/RESISTANCE/BLACK STUDENT UNIONS; 1968-1971; 33 pages. This file was released to researcher Murv Glass following a request for CIA files on the Black Student Union at the University of California at Santa Barbara. The documents show that Project Resistance and other CIA programs regularly used informants. [The Church Report stated that Resistance did not run unilateral informant operations.—Ed.] ($3.30)

*C-45. CIA FILE ON UNIVERSITY OF MICHIGAN AND CENTER FOR CHINESE STUDIES; 1965-1976; 279 pages. This file was requested under FOIA by the editors of *Michigan Daily*. It documents confidential contacts between various CIA research offices and China scholars at the University of Michigan. It also shows the Agency's attempt to maintain academic contacts in a period when the propriety of classified government research was increasingly called into question. A 1966 CIA memo in the file states: "If a university wishes to stipulate provisos or qualifications we will be glad to consider them. The university need only say what they are." ($27.90/copy)

*C-46. CIA/RESISTANCE/PEACE AND FREEDOM PARTY; 1968-1974; 85 pages. This file was obtained by the Peace and Freedom Party under FOIA. The Party was an object of CIA domestic surveillance under Project Resistance. This file shows that more than 50,000 names of PFP members from a single state (California) were indexed by Resistance; the figure given by the Church Committee was 12-18,000 names nationwide. These indexes were retained at least as late as May 1974. ($8.50/copy)

*C-47. CIA/POLICY ON RELATIONSHIPS WITH JOURNALISTS/MATERIAL SENT TO INTELLIGENCE COMMITTEES; 1973-1976; 47 pages. After litigation under FOIA, these documents were released to journalist Judith Miller in response to a request for all material on CIA use of journalists which had been sent to the House and Senate Intelligence Committees and the Rockefeller Commission. The file contains little factual information, but does include statements of CIA policy. Certain comments in the file raise the possibility that CIA contacts with journalists were more extensive than reported to the Committees. ($4.70/copy)

C-54. CORRESPONDENCE OF VICTOR REUTHER INTERCEPTED BY THE CIA; 1968; 11 pages. Five items of Victor Reuther's correspondence intercepted in 1968. At that time an official of the United Auto Workers (UAW), Reuther's name was also on HTLINGUAL's "watch list" for mail intercepts from 1969-1971. ($1.10/copy)

C-55. CIA DISTRIBUTIONS TO ACADEMICS; 1976; 11 pages. Lists of more than 40 colleges and universities to which the CIA sent unclassified publications produced by its overt research branch on Soviet government personnel, international terrorism, and other subjects. ($1.10/copy)

C-58. INTERNATIONAL TERRORISM IN 1976; July 1977; 22 pages. An analysis of trends in international terrorism which finds, among other things, that while the number of terrorist incidents increased in 1976, the number of acts involving kidnaping and hostages, and the proportion of acts directed against US citizens and property, declined. Cuban exile formations emerged as "among the most active and most disruptive terrorist groups." ($2.20/copy)

C-61. DCI TURNER'S STATEMENT ON HARVARD GUIDELINES; August 1977; 3 pages. Turner states that the CIA will ignore Harvard's requirement that university officials be informed of all CIA contacts with university personnel, and dodges the issue of covert recruitment on campus. ($.30/copy)

C-43. STUDIES IN INTELLIGENCE; 1972-1973; 297 pages. Seventeen previously classified articles and 33 book reviews written for circulation within the Intelligence Community. Subjects range from a post-mortem of U.S. involvement in Vietnam, to the use of logic in intelligence analysis, to a review of Agee's *Inside the Company*.

C-44. CIA ASSASSINATION PLOTS: MEMOS ON TRUJILLO, CASTRO, SOUTH VIETNAMESE LEADERS, BELGIAN CONGO LEADERS, MESSAGES CONCERNING TRUJILLO; 1960-1970, 127 pages. CIA discussions and planning of assassination plots concerning Trujillo, Castro, and S. Vietnamese and Belgian Congo leaders. CIA agents discuss eventual outcomes of such assassinations, and what effect the assassinations would have in those countries. ($12.70/copy).

C-45. CIA USE OF ACADEMICS; 1967-1975; 148 pages. Released through litigation under the FOIA, these documents contain information on open and covert CIA-university relationships for purposes of research, recruitment, and surveillance of student dissent. ($14.80/copy)

C-46. GLOMAR EXPLORER STORY; January 1974 - March 1975; 221 pages. Agency documents showing DCI Colby's vigorous efforts to keep the *Glomar Explorer* story out of the papers by briefing reporters and editors on its importance to the national security. The story was held for more than a year through the cooperation of the *New York Times, Los Angeles Times, Washington Post, Parade Magazine, Time, Newsweek*, CBS, AP, UP, and other news organizations. The file contains the incidental statement by Colby that the Agency uses prostitutes to obtain information. ($22.10/copy)

APPENDIX D -- Illustrating the value of reading the full document even if document was discussed in Congressional Report.

Recent congressional committees have reported on a number of improper or questionable CIA activities. But even acknowledging the accuracy of these reports, the release of CIA documents through the Freedom of Information Act has made valuable contributions to public understanding of those activities and of important issues which they raise.

These primary documents often contain a richness of detail that cannot be conveyed in summary form. They allow once secret activities to be placed in context and their implications better understood. Even when they contain no new factual information they may illustrate official attitudes and assumptions in important ways. One example is former CIA General Counsel Lawrence R. Houston's 1969 memorandum concerning the constitutionality of CIA paramilitary operations in Laos.

According to the Church Committee, the CIA in Laos, beginning in 1962, "implemented air supply and paramilitary training programs, which gradually developed into full-scale management of a ground war." 1/ This operation "eventually became the largest paramilitary effort in post-war history," 2/ until in 1971 the burden of expenses in Laos was turned over to the Defense Department.

The Committee referred to the operation in Laos -- and to Houston's memo -- in discussing whether large paramilitary actions based solely on Executive authority are an infringement of Congress' power to declare war. 3/ Referring to the memorandum in a footnote, the Church Committee wrote:

> And, in 1969, the CIA General Counsel wrote that the 1947 Act provided "rather doubtful statutory authority" for at least those covert actions -- such as paramilitary operations -- which were not related to intelligence gathering.

Houston's memorandum was prepared in 1969 in response to Senator William Fulbright, who raised the issue of whether largescale covert paramilitary operations are constitutional. It illustrates the lack of seriousness with which the CIA treated the problem. Houston begins by playing a game with

definitions and ends by begging the question with an appeal to Presidential authority. "If Senator Fulbright were right in saying that we are 'waging war' in Laos," Houston writes,

> we would indeed have a constitutional question. A formal declaration of war requires action by the Congress. I know of no definition, however, which would consider our activities in Laos as "waging war" except Senator Fulbright's. We have no combatants as such, although the Air Force pilots doing the bombing come close, and indeed our people on the ground would probably not be entitled to the technical protection of the Geneva Convention for prisoners of war. . . .
>
> . . . . It is obviously futile to argue with Senator Fulbright along these lines, as his quarrel is with the Presidency, not with this Agency. 4/

(The full text of Houston's memorandum is attached.)

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Doc. 9a

30 October 1969

MEMORANDUM FOR: Director of Central Intelligence
SUBJECT: Symington Subcommittee Hearings

1. This memorandum is for information.

2. If Senator Fulbright were right in saying that we are "waging war" in Laos, we would indeed have a constitutional question. A formal declaration of war requires action by the Congress. I know of no definition, however, which would consider our activities in Laos as "waging war" except Senator Fulbright's. We have no combatants as such, although the Air Force pilots doing the bombing come close, and indeed our people on the ground would probably not be entitled to the technical protection of the Geneva Convention for prisoners of war. We are assisting with materiel, advice, and a fair number of bombs in the efforts of a native population to prevent a military takeover to which it objects. There are any number of precedents throughout history for doing this—by executive action without any formal declaration of war or execution of a formal treaty.

3. As for the authority of this Agency to engage in such activities, I think you were probably exactly right to stick to the language of the National Security Act of 1947, as amended, particularly that portion which says that the Agency shall "perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct." Actually, from 1947 on my position has been that this is a rather doubtful statutory authority on which to hang our

Doc. 9b

paramilitary activities . . . opinions, we have the necessary statutory administrative capabilities to do the job, and if we get the proper directive from the executive branch and the funds from the Congress to carry out that directive, these two together are the true authorization. We have had

such directives from the NSC 10/2 series on, and the Congress has provided the funds for the purposes indicated. This position is consistent with the opinion the Department of Justice rendered for us while Nick Katzenbach was Attorney General in connection with questions about the Bay of Pigs. The President can do what he determines has to be done in the national interest, using such assets as are available.

6. In essence, the question is not a legal one. It is the perpetual political power struggle between the executive with its responsibility for the conduct of foreign affairs and its authority over the armed forces and other executive branch assets on the one hand, and the responsibility of the Congress for the provision of funds and appropriate authorizations on the other. It is obviously futile to argue with Senator Fulbright along these lines, as his quarrel is with the Presidency, not with this Agency.

/s/
LAWRENCE R. HOUSTON
General Counsel

FOOTNOTES TO APPENDIX D

1. Final Report of the Select Committee to Study Governmental Operations With Respect to Intelligence Activities, United States Senate, 94th Cong., 2d Session, Report No. 94-755, Government Printing Office, 1976. (Hereinafter "Church Report") Book IV, p. 68.

2. Church Report, Book I, pp. 147-48.

3. Church Report, Book I, pp. 35-38.

4. Macy, Christy and Kaplan, Susan, Documents: A Shocking Collection of Memoranda, Letters, and Telexes from the Secret Files of the American Intelligence Community, (New York: Penguin Books, 1980).

APPENDIX E -- Illustrates that documents released under the FOIA can reveal errors in official reports.

In many cases CIA documents released through the Freedom of Information Act not only enrich or expand government reports of improper CIA activities, but flatly contradict them. The resources of government committees are finite; their investigations have often identified issues which could be examined in greater detail by the public using the FOIA as an oversight tool.

One case in which the FOIA has fundamentally altered public understanding of CIA activities is that of Project RESISTANCE. RESISTANCE was a nation-wide study of U.S. protest movements conducted between 1967-1973. (The FOIA has been informative about many aspects of RESISTANCE, but this appendix examines only the question of whether RESISTANCE information was gathered from open sources or through infiltration of political groups in the U.S.)

Project RESISTANCE was first disclosed in the final reports of the Rockefeller Commission and the Church Committee.

The Rockefeller Commission found that information collected for RESISTANCE was primarily based on open sources such as newspapers and pamphlets and that the Project "used no infiltrators, penetrators, or monitors." Occasionally RESISTANCE received assistance from local police departments or campus security forces. 1/

The Church Committee reiterated these conclusions, stating that "the files indicate no use of infiltrations by CIA in connection with this program. The overwhelming bulk of the information continued to be press clippings passed on to headquarters." 2/

But Project RESISTANCE files released under the FOIA contain numerous reports from unilateral CIA informants who infiltrated and monitored protest groups in Texas, Los Angeles, Washington, D.C. and elsewhere. The use of informants was a matter of policy and not a departure from policy, as indicated by printed "Confidential Informant Information" forms attached to informant reports.

(Examples of Project RESISTANCE informant report cover sheets are attached.)

CONFIDENTIAL INFORMANT IDENTIFICATION

SUBJECT: PROJECT RESISTANCE

CASE NO: 533 989 OFFICE: _

REPORT DATE: 28 March 1969 CATEGORY: INTERIM

NAMES AND ADDRESSES, OR OTHER IDENTIFYING DATA, OF TEMPORARY CONFIDENTIAL INFORMANTS:

R-1: [redacted]

UNDER NO CIRCUMSTANCES SHALL THE IDENTITY OF CONFIDENTIAL INFORMANTS BE REVEALED TO PERSONS OUTSIDE OF OS WITHOUT THE APPROVAL OF DDS/IOS

FORM 10-63 2082

FILE NO. 533 989 DATE 27 January 1968

SYNOPSIS

Confidential Informant, R-1, provided information concerning local Project Resistance movements in the North Central Texas area, indicating that most of the activities concerning the peace movement, including the activities of the Students For A Democratic Society and the Dallas Committee For A Peaceful Solution To The War In Viet Nam, have established a center at 4915 Swiss Avenue in Dallas, which they call the Peace House. He additionally advised that it has become increasingly evident in recent weeks that the leaders of these groups are associating with narcotics addicts and pushers in the Dallas area and that the Dallas Police Department hope to collect sufficient evidence to establish a definite relationship between local peace movement leaders and the narcotics trade and ultimately discredit these leaders as the result of publication of such information through a cooperative effort with the local news media. R-1 additionally advised that a Black Power Conference is scheduled for Dallas, to take place sometime in the next two or three months. Additionally it appears that there are some noteworthy activities on the Bishop College campus and it appears the Student Non-Violent Coordinating Committee might be becoming more active in the Dallas area and the "peaceniks" are still holding their weekly vigils in Dealy Plaza. The January 17 to 31, 1968 edition of Notes To The Underground was obtained and attached to the report.

REPORT NO.

FORM 1125 REPLACES PREVIOUS EDITIONS OF FORMS 1125 AND 1125A WHICH ARE OBSOLETE.

FOOTNOTES TO APPENDIX E

1. Report to the President by the Commission on CIA Activities Within the United States, June 6, 1975 ("Rockefeller Report") p. 155-56.

2. Church Report, Book III, p. 722.

APPENDIX F

Senator Birch Bayh, Chair
Senate Select Committee on Intelligence

Senator Edward Kennedy, Chair
Senate Judiciary Committee

Senator John Culver, Chair
Subcommittee on Administrative Practice and Procedure
Senate Judiciary Committee

Representative Edward Boland, Chair
House Permanent Select Committee on Intelligence

Representative Jack Brooks, Chair
House Government Operations Committee

Representative Richardson Preyer, Chair
Subcommittee on Government Information and Individual Rights
House Government Operations Committee

Dear Members of Congress:

We are writing to express our opposition to Section 421(d) of S 2284/HR 6588, "The National Intelligence Act of 1980," which would substantially exempt the CIA from the Freedom of Information Act, and to Section 3 of S 2216/HR 6316, "The Intelligence Reform Act of 1980," which would extend that exemption to all U.S. Intelligence agencies.* These provisions represent a radical change in government policy and would severely limit the disclosure of information to the public. They would damage serious historical and journalistic research and the conduct of informed public debate.

Because of the major role the Central Intelligence Agency has played in this country's foreign relations since World War II, its files are an invaluable resource for historians, political scientists and others. CIA documents released under the FOIA have contributed to a substantial and growing body of historical and journalistic works.

The FOIA has also resulted in the public disclosure of:

- CIA spying on the Reverend Martin Luther King, Jr.;
- CIA infiltration of lawful political groups in the United States;
- CIA secret behavior control and drug-testing programs;
- CIA attempts to keep the Glomar Explorer incident out of the press; and
- CIA failure to fully disclose information in response to authorized Congressional requests.

Indeed, the FOIA provides an independent check on the CIA's activities. Under the proposed revision, that important check would be eliminated.

The Freedom of Information Act in its present form provides ample protection for information that is properly classified or which reveals intelligence sources or methods. CIA officials admit that the Agency can protect legitimate secrets under the Act. Testifying before the House Permanent Select Committee on Intelligence last year, Deputy Director of the CIA Frank C. Carlucci said, "It is undeniable that under the current FOIA, national security exemptions exist to protect our most vital information." Mr. Carlucci reiterated this position as recently as February 20, 1980 in testimony before the Subcommittee on Government Information and Individual Rights of the House Government Operations Committee.

Furthermore, John Blake, who as Deputy Director for Administration was responsible for the administration of the FOIA at the Central Intelligence Agency, told the Senate Judiciary Committee in 1977 that, with respect to the FOIA, "We have been able to make the necessary adjustments. I am pleased to report that, in fact, I think that the Agency is better off for it."

Given the record of substantial public benefit from the use of the Act and the CIA's continued ability to protect legitimate secrets, there is no justification for virtually exempting the CIA from the Freedom of Information Act. Any concerns about the FOIA should be reviewed carefully through public hearings at which historians, journalists and other users of the Act are given the opportunity to testify.

It is imperative that the Freedom of Information Act not be sacrificed as part of a hasty or ill-considered reaction to current international tensions. We urge you to reject Section 241(d) of S 2284/HR 6588, Section 3 of S 2216/HR 6316, and any similar provision which would undercut the FOIA.

cc: All members of the Select Committee on Intelligence and the Committee on the Judiciary, U.S. Senate; All members of the Permanent Select Committee on Intelligence and the Committee on Government Operations, U.S. House of Representatives

attached: List of Books and Articles Based Wholly or in Part on Documents Released by the CIA as a Result of the Freedom of Information Act

*Please note that, while this letter addresses our concerns about provisions affecting the Freedom of Information Act, it is not intended to imply support for any other provision of the proposed legislation.

National Organizations

American Baptist Churches, USA
Office of Governmental Relations
June Totten, Director

American Civil Liberties Union
John Shattuck, Legislative Director

American Ethical Union
Raymond Nathan, Director
Washington Ethical Action Office

American Friends Service Committee
John A. Sullivan, Associate Executive Secretary

American Historical Association
Mack Thompson, Executive Director

American Privacy Foundation
David Watters, Washington Representative

Americans for Democratic Action
Leon Shull, Executive Director

Association of American Publishers
Townsend Hoopes, President

Association of Arab American University Graduates
Mujid S. Kazimi, President
Abdeen Jabara, Member of the Board

Campaign for a Nuclear Free Philippines
John Miller

Center for Constitutional Rights
Robert Borkin, Chairperson, Board of Directors
Frank Deale, Staff Attorney

Center for International Policy
Donald L. Ranard, Consul General (Ret.), Director

Center for National Security Studies
Morton H. Halperin, Director

Christian Church (Disciples of Christ),
Department of Church and Society of the
Division of Homeland Ministries
Rolland G. Pfile, Executive Secretary

Church of the Brethren, Washington Office
Ronald P. Hanft, Director

Church of Scientology, National Commission
on Law Enforcement and Social Justice
Kevin O'Donnell, Associate Director

Citizens Energy Project
Ken Bossong, Scott Denman, Jan Simpson,
Staff Associates

Clergy and Laity Concerned
John Collins, Barbara Lupo, Co-Directors
David Coolidge,
Washington Area CALC

Committee for Public Justice, Inc.
Nancy Kramer, Executive Director

Common Cause
David Cohen, President

Congress Watch
Howard Symons, Staff Attorney

CovertAction Information Bulletin
Ellen Ray, William Schaap, Louis Wolf, Co-editors

Environmental Action Foundation
Claudia Comins, Director

Environmental Policy Center
Robert Alvarez

Federation of American Scientists

Feminist Resources on Energy and Ecology
Donna Warnock, Coordinator

Freedom of Information Clearinghouse
Katherine A. Meyer

Freedom to Write Committee, PEN American Center
Dore Ashton, Chair

Friends Committee on National Legislation
Edward F. Snyder, Executive Secretary

Friends of the Filipino People
D. Boone Schirmer, National Coordinator

Fund for Constitutional Government
Robert R. Carr, Executive Director

Fund for New Priorities in America
Jack Sangster, National Director

Fund for Open Information and Accountability, Inc.
Dorothy Steffens, Executive Director

Grove Press
Barney Rosset, President

Historians for Freedom of Information
Harold Fruchtbaum, Secretary

Indian Law Resource Center
Tim Coulter, Executive Director

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Prison Law Monitor
Joseph Lykins, Assistant Director

Interreligious Foundation for Community Organization, Inc.
Lucius Walker, Executive Director

Jesuit Social Ministries, National Office
Ted Zern, S.J., Associate Director

La Raza Unida Party
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Edward R. Killackey, Director

Mennonite Central Committee, Peace Section,
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Rev. Bob Moore, National Secretary

The Nation
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National Alliance Against Racist and Political Repression
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National Bar Association
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National Committee Against Repressive Legislation
Esther Herst, Director

National Conference of Black Lawyers
Victor Goode, National Director

National Emergency Civil Liberties Committee
Edith Tiger, Director

National Indian Youth Council
Gerald Wilkinson, Executive Director

National Women's Political Caucus
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New American Movement
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The Progressive
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Project for Open Government
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Public Citizen Litigation Group
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Larry Rand, Director of Special Programs, New York Office

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United Methodist Church; Department of Law, Justice and Community Relations of the Board of Church and Society
Rev. John P. Adams, Director

United States Catholic Mission Council
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United States Student Association
Frank Jackalone, President

Women Strike for Peace
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Committee to Reinvolve Ex-Offenders, Washington Chapter
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Abe Bloom, John Wilson, Co-Chairs

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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MONICA ANDRES
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Plaintiffs

v.

CENTRAL INTELLIGENCE AGENCY

STANSFIELD TURNER, Director
Central Intelligence Agency
Washington, D.C. 20505

Defendants

SMITH, J.

Civil Action No. 80- 1235

MAY 15 1980

COMPLAINT FOR INJUNCTIVE RELIEF
(FREEDOM OF INFORMATION)

JURISDICTION

1. This is an action under the Freedom of Information Act, as amended, 5 U.S.C. §552(a)(4)(B)(FOIA) and the Administrative Procedure Act, 5 U.S.C. §702 to enjoin defendants from unreasonable delay and discriminatory treatment in processing FOIA requests from plaintiffs, to require defendants immediately to process plaintiffs' requests for records, and to permit access to certain records in defendants' possession.

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. §552(a)(4)(B), and 28 U.S.C. §1331.

PARTIES

3. Plaintiff Center for National Security Studies ("CNSS") is a project of the Fund for Peace and the American

Civil Liberties Union Foundation. Among its activities, CNSS makes extensive use of the FOIA to obtain government documents concerning national security issues, including issues relating to the CIA, and makes such documents available to scholars, journalists and other interested persons. CNSS monitors legislation and members of its staff are frequently requested to testify before congressional committees concerning national security issues, including issues relating to the CIA. Members of the CNSS staff publish a monthly publication entitled "First Principals" and numerous articles and books concerning national security using information obtained from the government under the FOIA. In addition, CNSS publishes abstracts of government documents which have been released under the FOIA.

4. Plaintiff Mortin H. Halperin is the director of CNSS. He has responsibility for all activities of CNSS, including supervising staff members. Halperin needs access to the material which is the subject of the FOIA requests at issue in this complaint to prepare speeches, testimony before Congress and publication of books and articles on matters affecting national security. In addition he seeks access to this material to aid in teaching a graduate level course at Columbia University concerning national security matters.

5. Plaintiff Monica Andres is the librarian of CNSS. She is responsible for making requests under FOIA, including many requests which are the subject of this suit, maintaining files of information released under FOIA and providing information and copies of documents to scholars, journalists and others requesting information about the CIA and national security. Plaintiff Andres also prepares

abstracts of documents released under FOIA and writes articles for "First Principals" based on information released under FOIA.

6. Defendant Central Intelligence Agency ("CIA") is an agency of the United States and has possession of records to which plaintifffs seek access.

7. Defendant Stansfield Turner is Director of the CIA.

COUNT I

8. By letter dated January 19, 1976, Morton H. Halperin requested access under FOIA to all responses to the May 9, 1973 directive of the Director of Central Intelligence asking that he be informed of any activities which might be construed to be outside the legislative charter of the agency.

9. By letter dated January 28, 1976, Gene F. Wilson, the Information and Privacy Coordinator of defendant CIA, acknowledged receipt of the request, denied the request for the waiver of fees and noted delays that were being caused by the large volume of requests.

10. By letter dated February 17, 1976, Wilson informed Halperin that the records he had requested were being withheld under exemptions 1, 3 and 5 of FOIA.

11. By letter dated March 2, 1976, Halperin appealed the denial.

12. By letter dated August 25, 1976, the Department of the Treasury released one document, with certain names deleted, which had been referred by the CIA to the Secret Service for disposition.

13. By letter dated December 8, 1976, the Department of State released four documents referred to it as the originating agency by the CIA as a result of Halperin's appeal.

14. By letter dated May 23, 1977, defendant CIA released one document in its entirety and twenty (20) documents with partial deletions, primarily of names, job titles and identifying information based on exemptions 1, 3, 5, and 6.

15. By letters dated June 6, 1977, defendant CIA released two documents in their entirety, fourteen (14) documents with partial deletions and withheld three (3) documents in their entirety. The grounds upon which material was withheld were exemptions 1, 3, 5 and 6.

16. Almost two years later, by letter dated April 23, 1979, defendant CIA released five (5) documents in their entirety, seven (7) documents with partial deletions and withheld one document in its entirety. The grounds for withholding material were exemptions 1 and 3.

17. Over four years have passed since plaintiff Halperin originally filed this request and, although additional documents subject to the request are acknowledged to exist by defendant CIA, no further response to this request has been received, in violation of subsection (a)(6)(A) of FOIA.

COUNT II

18. By letter dated June 25, 1976, to defendant CIA, Morton H. Halperin requested access under FOIA to sixty (60) documents identified in the Final Report of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities.

19. In telephone conversations in October and December 1976 with persons at CIA, the staff of CNSS was informed that periods of time varying from three weeks but not exceeding three months would be required to process the request.

20. By letter dated December 8, 1976, Halperin informed Gene Wilson, Freedom of Information Officer at defendant CIA that he was treating as a denial the failure to process the request within ten days as provided by subsection (a)(6)(A)(i) of the FOIA and was appealing the denial pursuant to that subsection.

21. By letter dated December 16, 1976, Wilson informed Halperin that arrangements would be made to consider his appeal.

22. Defendant did not make any disposition of the appeal within twenty (20) days as provided in subsection (a)(6)(A)(ii) of FOIA and, over forty months later, no disposition of this request has been made by defendant CIA.

COUNT III

23. By letter dated June 28, 1976, plaintiff Halperin requested access under FOIA to all files in the possession of defendant CIA relating to "Project 2" referenced in the Final Report of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities.

24. By letter dated July 7, 1976, defendant CIA acknowledged receipt of this request.

25. By letter dated July 15, 1976, Halperin informed defendant CIA that he was treating the failure to process the request within the ten day limit under FOIA as a denial and was appealing pursuant to subsection (a)(6). Halperin noted his willingness to wait provided that a specific time

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table was set and that the CIA agreed that no documents covered by the request would be destroyed prior to the conclusion of any litigation arising out of the request.

26. By letter dated August 5, 1976, Wilson replied to Halperin estimating a total of four months required to process the appeal, giving assurance that the files would not be destroyed, and noting that it was the CIA's policy to process requests sequentially as a matter of fairness.

27. Over forty-five (45) months later, no disposition of this request has been made by defendant CIA, in violation of subsection (a)(6)(A)(ii) of FOIA.

COUNT IV

28. By letter dated September 20, 1976, plaintiff requested access under FOIA to all memoranda in the possession of defendant CIA analyzing the House Intelligence Committee Report including memoranda sent to the House Committee requesting changes or deletions and any assessments of damage made after the report was published in the Village Voice.

29. By letter dated October 5, 1976, Wilson acknowledged receipt of the request and informed Halperin that the heavy volume of FOIA requests had resulted in processing backlogs, that he had a right to appeal if the request was not processed within ten working days and that he would be notified if processing and research fees exceeded $25.

30. By letter dated November 15, 1976, Halperin elected to treat the failure to respond to the request within ten working days provided by FOIA as a denial and appealed.

31. By letter dated November 18, 1976, Wilson acknowledged receipt of the appeal.

32. Over forty-one (41) months later, no further response has been received concerning this request, in violation of subsection (a)(6)(A)(ii) of FOIA.

COUNT V

33. By letter dated January 11, 1978, plaintiff Andres wrote on behalf of CNSS requesting access under FOIA to defendant CIA's files on the assasination of Richard Welch.

34. By letter dated February 7, 1978, Wilson acknowledged receipt of the request and informed Andres that pursuant to the request for waiver of fees, the CIA had agreed to waive the first $200 of search fees. Wilson requested a confirmation of the CNSS's willingness to pay for search fees in excess of that amount and noted that no processing would occur until such confirmation had been received.

35. By letter dated July 20, 1978, plaintiff Andres indicated CNSS's willingness to pay at least $200 in search fees and requested that she be informed of any fees in excess of that amount.

36. By an undated letter from Charles Savige, defendant CIA indicated that CNSS would be informed of any fees in excess of $200, noted that there were processing backlogs and that a right of appeal would exist if the request were not processed within ten working days.

37. Over twenty-eight (28) months have passed since this request was filed and no disposition has been made of this request, in violation of subsection (a)(6)(A) of FOIA.

COUNT VI

38. By letter dated May 3, 1978, plaintiff Andres requested access on behalf of CNSS to all correspondence between any university and defendant CIA concerning guidelines governing relations between the university and defendant CIA.

39. By letter dated May 17, 1978, Wilson acknowledged receipt of the request, denied the request for waiver of fees on the grounds that the amount of material that would be released to the public would be insufficient to warrant such a waiver of fees and indicated that the CIA would not process the request until it had received a "firm commitment to pay the resultant processing fees."

40. By letter dated October 27, 1978, plaintiff Andres indicated CNSS's willingness to pay up to $50 in search fees and requested notification if fees would exceed that amount.

41. By letter dated November 7, 1978, Savige for George W. OWens acknowledged the October 27th letter and indicated the inability of the CIA to process the request within ten working days due to the heavy backlog.

42. Over eighteen months later, no further response has been received concerning this request, in violation of subsection (a)(6)(A) of FOIA.

COUNT VII

43. By letter dated August 11, 1978, plaintiff Andres requested access to the file containing the overall intelligence activity budget for fiscal year 1979.

44. By letter dated September 7, 1978, Savige for George Owens, Information and Privacy Coordinator of defendant CIA, denied access to this material under Exemptions 1 and 3 of FOIA.

45. By letter dated September 15, 1978, plaintiff Andres appealed the denial.

46. By letter dated September 20, 1978, Savige acknowledged receipt of the appeal.

47. Over nineteen months later, no further correspondence has been received concerning this request, in violation of subsection (a)(6)(A) of FOIA.

COUNT VIII

48. By letter dated October 11, 1978, plaintiff Andres requested access on behalf of CNSS to all documents pertaining to a June 14, 1978 meeting between CIA officials and university presidents.

49. By letter dated October 24, 1978, defendant CIA declined to waive search fees and indicated that no further processing of the request could take place until a firm commitment to pay such fees had been obtained.

50. By letter dated October 26, 1978, plaintiff Andres indicated CNSS's willingness to pay costs up to $100 and requested notification if search fees exceeded that amount.

51. By letter dated November 1, 1978, defendant CIA indicated that it would take between six and nine months to complete processing of the request and informed CNSS of its right to appeal in view of the fact that the CIA was unable to complete the processing of the request within the ten days provided under FOIA.

52. Over nineteen months later no further reply has been received concerning this request, in violation of subsection (a)(6)(A) of FOIA.

COUNT IX

53. By letter dated October 20, 1978, plaintiff Andres requested on behalf of CNSS access to all records pertaining to CIA involvement in the 1953 coup d'etat in Iran which led to the overthrow of Mohammed Mossadegh.

54. By letter dated May 22, 1979, defendant CIA acknowledged CIA participation in the overthrow of Mossadegh, admitted that it had made no search for records covered by the request but stated that any records which might exist would be exempt from disclosure under Exemptions 1 and 3 of FOIA.

55. By letter dated May 1, 1980, plaintiff Andres appealed this denial.

56. Defendant CIA's failure, for over eighteen months, to conduct a search for records covered by the request and to review them to determine whether they are exempt violates subsections (a)(6)(A) and the segregability provision of FOIA.

COUNT X

57. By letter dated November 8, 1978, plaintiff Andres requested access on behalf of CNSS to ten case files submitted by the CIA to the Senate Select Committee on Intelligence, Subcommittee on Secrecy and Disclosure in connection with that Subcommittee's investigation of national security secrets and the administration of justice.

58. By letter dated December 12, 1978, defendant responded to this request and two others filed on November 8 indicating that it would cost approximately $300 to process the requests, requesting a $150 deposit prior to beginning processing and denying a request for a fee waiver.

59. By letter dated March 29, 1979, plaintiff Andres indicated that the records requested were specifically identified and asked that the CIA reexamine the request and the amount of time and effort required to process it. The letter indicated that the original estimate far exceeded the reasonable standard charges for document search and duplication, as provided for under FOIA. It further noted that the FOIA conference report had stated "fees should not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information."

60. By letter dated March 4, 1980, defendant CIA denied the request on the grounds the records requested were exempt in their entirety under Exemption 3 of FOIA.

61. By letter dated March 17, 1980, plaintiff Andres appealed the denial noting that it was likely that segregable portions of the ten case files were not exempt and were required to be produced under FOIA.

62. By letter dated March 24, 1980, defendant CIA acknowledged the appeal and noted that the backlog of appeals would result in processing delays.

63. The failure of defendant CIA to release nonexempt portions of the requested files within the time limits set forth in FOIA violates subsection (a)(6)(A) and the segregability provision of FOIA.

COUNT XI

64. By letter dated November 21, 1978, plaintiff Andres requested access on behalf of CNSS to "any submissions made to the eight Congressional committees. . . relating to the Agency's attempts to influence the outcome or in any way manipulate the French elections in the last five years."

65. By letter dated December 18, 1978, defendant denied this request. The CIA indicated that it had not conducted any search for such records and could neither confirm nor deny their existence, but that if such records existed they would be classified and exempt from production under exemption 1 of FOIA and further would relate to information pertaining to intelligence sources and methods which the Director of Central Intelligence has the responsibility to protect from unauthorized disclosure in accordance with § 102(d)(3) of the National Security Act of 1947 and § 6 of the Central Intelligence Agency Act of 1949, making them exempt pursuant to exemption 3 of FOIA.

66. By letter dated December 28, 1978, plaintiff Andres appealed.

67. By letter dated January 9, 1979, defendant acknowledged receipt of the appeal.

68. Over sixteen (16) months later, no further response has been received concerning this request, in violation of subsection (a)(6)(A)(ii) of FOIA.

COUNT XII

69. By letter dated July 30, 1979, plaintiff Andres requested access to any photographs of the United States obtained by the National Reconnaissance Office or any other agency or component of the Defense Department of the CIA through any method of overhead reconnaissance, including satellite surveillance, during the years 1966, 1968, 1969, 1978 and 1979, including any analyses of such photographs.

70. Over nine months (9) have elapsed and no response has been received concerning this request, in violation of subsection (a)(6)(A) of FOIA.

COUNT XIII

71. The allegations in paragraphs 1-70 of the Complaint are repeated and incorporated herein by reference.

72. Defendant CIA, by the acts and practices described above, has failed to meet its obligation to process requests within the time limits set forth in subsection (a)(6) of FOIA. Defendant CIA has failed to exercise due diligence in processing the FOIA requests which are the subject of this Complaint and no exceptional circumstances exist which justify the delays.

COUNT XIV

73. The allegations of paragraphs 1-72 of the Complaint are realleged and incorporated herein by reference.

74. The failure of defendant CIA to comply with the processing deadlines of FOIA has had the purpose, among others, of delaying the processing of requests in the hopes that favorable legislation would be enacted which would exempt all CIA records from disclosure.

75. This failure to process and release non-exempt records has injured plaintiffs and impeded their efforts to collect and analyze information about the national security, to make such information available to the public and otherwise to use such information in their daily activities.

76. Defendant CIA's conduct violates FOIA and the Administrative Procedure Act.

COUNT XV

77. The allegations in paragraphs 1-76 of the Complaint are repeated and incorporated herein by reference.

78. Defendant CIA has established policies and procedures with respect to processing FOIA requests, including a policy of processing requests on a sequential basis as they are received.

79. Because plaintiffs frequently use FOIA to gain access to records concerning the vital public interest in national security and because plaintiffs often use the information obtained under FOIA to criticize the CIA and to engage in debate before Congress and other public forums over the appropriate measures to protect national security, defendant CIA has departed from the policy of sequential processing and other policies and procedures with respect to FOIA requests received from plaintiffs. It has delayed or taken no action on many of plaintiffs' requests while processing subsequent requests from other persons.

80. This conduct discriminates against plaintiffs in violation of FOIA and the Administrative Procedure Act.

81. The work of plaintiffs in engaging in public debate and in informing the public about issues affecting the national security has been frustrated by this unlawful and discriminatory conduct of defendant CIA.

WHEREFORE, plaintiffs pray that the Court (1) order defendants to complete processing of all aforementioned requests within one month; (2) enjoin defendants from discriminatorily processing any further requests from plaintiffs; (3) establish procedures to accomplish processing of FOIA requests in a reasonable period of time; (4) order defendants to permit access to the requested records; (5) take such action as the Court deems appropriate under

ion (a)(4)(F) of FOIA; (6) order expeditious pro-
...gs in this action as provided in 5 U.S.C. 552(a)(4)(D);
(7) award plaintiffs their costs and reasonable attorneys' fees in this action; and (8) grant such other and further relief as the Court may deem just and proper.

Dated: Washington, D.C.
May 15, 1980

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Mr. PREYER. Let me ask either of you a few questions as to whether there is any sort of ground for reconciliation here. When the Government is defending an FOIA case in court it has to prepare detailed indexes of materials that are withheld and the reasons for withholding them. The CIA complains that this is a great litigative and administrative burden.

Are there any ways to cut back either on the indexing requirement or on the extent of the affidavits that the Government must file in these lawsuits that would not damage your interests in lawsuits and that you would consider?

Mr. LYNCH. Quantitatively I think there is a great deal that could be done to reduce what I recognize to be sometimes an unreasonable burden, not only on the CIA but on other agencies as well, in the preparation of what are called *Vaughn* v. *Rosen* affidavits.

We are exploring in a couple of cases the possibility of random sampling in cases where there are a lot of documents and the Vaughn index may be very long indeed. We are exploring the possibility of random sampling of some of the documents and having a relatively detailed justification provided for why those documents that are the subject of the random sample must be withheld. The judge could then make a decision based on the random sample.

If he decides that arguments are unwarranted then his decision would apply to the other documents. To insure that the judge's decision was followed it might be necessary to have a post hoc audit of another set of random samples.

We do recognize the lack of utility in preparing *Vaughn* v. *Rosen* affidavits that could go on for hundreds and hundreds of pages that do not say anything very specific.

I think, with respect to the detail that the courts have demanded—and this goes to the qualitative nature of the *Vaughn* v. *Rosen* affidavits—particularly the U.S. Court of Appeals for the District of Columbia circuit, in a case called *Ray* v. *Turner* which is the leading case on *Vaughn* v. *Rosen* as it applies to the CIA—that case is at 587 Fed. 2d 1187. I think that detailed a demand is not unjustified and if the courts are going to perform de novo review they need that detail.

I would agree that it is not necessary to have quite the quantity that is required in some cases.

Mr. PREYER. While that does not address the CIA argument about misperception, I gather what you are saying is that something can be done by way of reducing the litigative and administrative burden on that score.

Mr. LYNCH. Yes. That is right, Mr. Chairman. On the perception problem, I think there are also some grounds for reconciliation.

I realize I was quite harsh in my criticism of H.R. 7056, but H.R. 7055 does not merit such harsh criticism at all. I think that bill is perhaps redundant because I have not been convinced that this perception problem is real.

Assuming that it is, if you had an exemption as contemplated by H.R. 7055 that lays out in the law that information provided under an express promise of confidentiality from either a secret intelligence source or from a foreign intelligence service is going to be kept, I

would not have any great objection to that. I think that kind of information is clearly exempt under exemption (1) and under exemption (3) in 50 U.S.C. 403(d)(3), but if they would like to have it in black and white so that they can go to their foreign liason agencies and sources and say, "Here we have an exemption that will protect the information you provide under an express request for confidentiality," it will be protected.

However, it would be reviewed if necessary by a judge. That is necessary. If they get the total exemption that they want with no threat of judicial review we are going to find, first, 5-page documents, then 25-page documents, then 500-page documents which are going to be withheld in their entirety because there is one source sensitive sentence buried in the middle. You need that threat of review to make sure that that withholding by contamination is not put into effect.

Mr. PREYER. Let me ask Mr. Halperin this. All properly classified material is exempt from disclosure under the Freedom of Information Act. Can you speculate as to why the President did not broaden the recently revised Executive order on classification to include categories of information that the CIA is now asking Congress to protect?

Mr. HALPERIN. You are asking me to speculate, Mr. Chairman, about the process of decisionmaking within the executive branch.

I think part of it is that simply a different group of people were responsible for drafting the Executive order than are responsible for developing the CIA amendments.

As I understand it, the CIA did not press for those changes in the Executive order. I think it may be because they recognized that they would not get them.

I think it is also because they want to get themselves out of the procedural requirements of the Executive order. For example, the new Executive order has what we call the balancing test in it which says that information can only be withheld if the public value of it does not outweigh the possible injury to national security if it is released.

Insofar as the CIA relies on the first exemption, they have to engage in that balancing. They have been resisting that bitterly and they have just been ordered by the District Court of the District of Columbia, by Judge Sirica, to engage in that balancing which is required by the Executive order.

I think they would prefer to rely on a statute that they can draft and which they can make sure does not have, from their point of view, any loopholes.

I think one has to say that if the President's judgment is reflected in that Executive order as to what information needs to be kept secret in the interest of national defense and foreign relations and what procedures ought to be followed, the Agency should be required to live with that and Congress should not be asked to give them a lower standard than the President gave them in the Executive order.

Mr. PREYER. Thank you. Let me give someone else a chance here.

Mr. Drinan?

Mr. DRINAN. Thank you, Mr. Chairman.

I want to commend the witnesses on their statement. I was particularly impressed, Mr. Halperin, by the last paragraph on page 1;

namely, that even if the CIA got everything that they wanted to with regard to the FOIA their problem would still exist.

I would assume that they could tell foreign intelligence offices and foreign sources of information that everything that they receive from those sources would be classified. They would have that power I would assume.

[General response of "Yes."]

Mr. DRINAN. Why do they not do that and say that it is classified forever and cannot be declassified?

Mr. HALPERIN. It is because under the Freedom of Information Act a judge does conduct a de novo review of classified documents and could, in theory, reach the judgment that it was not properly classified and order it released.

I think that it is extraordinarily implausible that any Federal district court judge would order release of information received from a confidential or secret intelligence source whose life could be put in jeopardy if information were released. That has never happened. I cannot imagine it happening.

I think the CIA could say, with absolute confidence, "We are confident that we have ample authority under the Freedom of Information Act to decline to release this information and we will not release it."

Mr. DRINAN. They perceive this to be a problem and rightly or wrongly, they have the idea that these foreign agents are not speaking to them. They say that they cannot prove it because you cannot prove a negative. However, these people are just not giving the information.

Is there any way besides amending the FOIA by which the law can reach the problem that the CIA feels it has?

Mr. HALPERIN. I do not think that there is any way to reach that problem. First of all, our position is that these protests about the Freedom of Information Act have not arisen spontaneously from these foreign information sources but that there have been some previous discussions.

I think the problem, in large part, stems from our political system. If I were a foreign source thinking about working for the CIA I would be much more disturbed about reading in the newspaper that Iranian nationals helped the U.S. Government rent a warehouse which was to be used in the aborted attempt to rescue the hostages and that American CIA agents or intelligence officers went in disguised as European businessmen and worked with local Iranians to set up arrangements to rent the trucks, and so on.

If I were an Iranian who cooperated with that I would feel very nervous because those stories were in the newspaper, not because there was a Freedom of Information Act.

If I were a national of another country thinking about cooperating with the CIA or some other U.S. intelligence service I think I would be much more affected by that, by the fact that the CIA left behind a record of every Vietnamese who cooperated with them to be captured by the North Vietnamese, by the fact that the Kurds were encouraged to revolt and then were left to be killed than I would be by the theoretical possibility that some judge someday may order something be released under the Freedom of Information Act.

Mr. DRINAN. I assume that the CIA is preparing legislation to take care of all of those things too. They want to correct those.

Mr. HALPERIN. But they have to be prepared to indict high White House officials if they want to correct that problem. I do not know that they have legislation——

Mr. DRINAN. Coming back to my original question, is there any way to meet them halfway? They feel very sincere about this and very strongly. They have the White House semipursuaded, at least.

Mr. HALPERIN. I think, as Mr. Lynch has suggested, that the amendment that the chairman and the subcommittee has put in meets the problem insofar as it is a legitimate problem. The problem is if the CIA announces it as not effective or not acceptable, then since it is a perception problem it does not meet it.

We have always felt that the only way to deal with the problem is to persuade the CIA that they are not going to get what they want, that they therefore ought to be willing to work with the committees to develop something which will not vitiate the act but will give them something to deal with their perception problem.

I think, as soon as they realize that they are not going to get what they want, it would be possible very quickly to agree to something along the lines of the amendment that has been put forward by——

Mr. LYNCH. Mr. Drinan?

Mr. DRINAN. Yes.

Mr. LYNCH. I just want to point out too that it is worth underlining the rather wishy-washy nature of the CIA's contentions in this matter. They originally took the position that they had to have a total file exemption in order to take care of the perception problem. They could not sell that to the Justice Department, so they backed off from that.

Now they are saying their perception problem can be solved if the possibility of judicial review is removed. If they are unsuccessful there, I think they may fall back to the position of saying that the perception problem will be solved with H.R. 7055.

They have wishy-washed back and forth here quite a bit as to what the necessary cure for this purported perception problem is.

Mr. DRINAN. I have one last question, Mr. Chairman.

The seventh exemption of the FOIA is that the CIA can withhold all information received from a confidential source. Why is that not adequate? I suppose that is ultimately reviewable, but if they say that something is from a confidential source or a foreign agent, it seems to me almost inconceivable that any Federal judge would assert the power, if he has the power, to say that they have to disclose it.

Mr. LYNCH. I am sympathetic to the CIA with respect to why they cannot use the seventh exemption because that is all predicated on law enforcement information.

Mr. DRINAN. They cannot use it at all?

Mr. LYNCH. They cannot use the seventh exemption, except perhaps in very very limited circumstances perhaps related to the Foreign Intelligence Surveillance Act. Since that exemption is limited to law enforcement information the majority of the Agency's files cannot fall within it.

They tried that early on——

Mr. HALPERIN. They have a catch-22 there, namely, that it only relates to lawful national security investigations. The District of Columbia Court of Appeals has said that they do not have a right to

engage in lawful criminal investigations. Therefore, they cannot use it because if they claim that it is then unlawful they cannot use it.

Mr. DRINAN. I see. I thank both of you very much. You have been very helpful.

I yield back the balance of my time.

Mr. PREYER. Thank you. Mr. Erlenborn?

Mr. ERLENBORN. I have no questions, Mr. Chairman.

Mr. PREYER. Thank you. Mr. Butler?

Mr. BUTLER. Thank you, Mr. Chairman.

I hate to keep beating a dead horse here, but I think the basic problem is: Is there a perception problem or is there not? We have a group that says "Yes" and we have a group that says "No."

My questions are: How do you resolve this? How do we really make a determination as to this problem and how bad it may be? How do we make a scientific determination as to whether or not there is a perception problem? Have you thoughts on that?

Mr. HALPERIN. I think one thing we can do is to look at, as we have tried to do there, and which we tried to do more in the longer report which is attached to our statement, all of the different ways that information can be made public over the objection of the CIA agent who is talking to this potential source.

CIA says the problem is that you go into a room with a potential source of assistance and that person or that agency says, "Can you assure me that the fact that I have given you information and my identity will never be made public?" The CIA says that it has to be able to give that assurance in order to pursuade the person to work for them.

I think what one could do is to ask the question: What are all the different ways that this other person would be aware of that would prevent the CIA person from giving an absolute assurance? If you run down that list: unauthorized disclosure by various people within the Government, spies who actually give the information away—we have unfortunately had a few of those recently—court orders in civil actions wherein people's constitutional rights have been violated, requests for documents by individuals for their own files which the CIA is not purporting to change.

If you run down all of those possibilities, on the list would be FOIA requests of the kind that are covered under this amendment, but so would 22 other things. Then if you looked at the newspapers and see what kind of information has gotten into the headlines and the news in a way that would raise questions in the minds of potential agents as to whether or not CIA can keep their secrets, or if you looked at, say, the New York Times index or some other source of news information, you would find that the sources of the information that have been made public and that would potentially scare off foreign agents are not disclosures under the Freedom of Information Act, because there have been none. No court has ordered any sentence released that has been made public.

You would find all of these other things—that there were spies who were selling various secret CIA manuals to the Russians, that there were leaks from high White House sources and other people about cooperation by people with the CIA. If you ran down the list, I think, the conclusion that you would have to come to is that there is a per-

ception problem. The CIA does have a credibility problem when it tries to assure people that their identities will never be made public, but that that credibility problem comes from 15 or 20 different sources.

The FOIA is a very small part of that. Then I think you have to balance the degree to which you would help solve the problem by making this amendment to the Freedom of Information Act against the importance to public debate in the United States of the existing amendments. I think if you did all of that you would say that you should not change the act.

Mr. BUTLER. I am not a bit surprised at your conclusion. Nevertheless, it is basically a subjective determination of the source and we are at his mercy.

Not only do we have Mr. Carlucci, we have others. The gentleman from North Carolina and I were at a briefing with the same people representing the United States in one of the foreign capitals. They volunteered this information. The perception problem is very real in their efforts to cultivate intelligence sources.

I think that is pretty good evidence that it exists. I just do not believe that running down a laundry list of possible sources of their misperception, if that is what it is, is going to be very comforting. That is the problem I have.

I appreciate the work you have done and you certainly gave a much more perceptive analysis of the act itself, but I am at a loss as to how I can really go behind a simple statement of people in the field that there is a perception problem. I do not feel qualified and I do not think you have given me much encouragement to believe that these people do not believe it.

Mr. HALPERIN. Let me take just one more second, if I may, to respond to that. I am not saying that the Freedom of Information Act is not part of the perception or misperception problem, but the CIA agrees and Mr. Carlucci has testified that all of these other things are part of the perception problem as well. Some of those are not misperceptions. They are real perceptions.

It is true that White House sources said things about the Iranian operation. It is true that——

Mr. BUTLER. Well, you realize that there are those that are taking steps to do something about that.

Mr. HALPERIN. I think something should be done about that. That is a problem we can do something about. It is not a misperception problem. It is a correct perception problem.

I think those are the problems we ought to work on.

I would ask you to look at this proposed administration amendment, on page 2 of H.R. 7056. Just ask yourself this. If you were a Polish colonel——

Mr. BUTLER. Do not identify the country. [Laughter.]

Mr. HALPERIN. All right. If you were a person working for the CIA in a country where that might get you killed if it were found out, you were worried about the Freedom of Information Act, and your control agent came rushing in and said, "Don't worry about it any more. Congress has just passed this."

Look at what this says. It has all sorts of references to judicial review. "This certification may not apply to information responsive to

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requests by United States citizens. * * *" It is limited and hedged in a variety of ways.

I find it impossible to believe that handing this convoluted, complicated piece of paper to somebody or summarizing it for them, and then saying, "The problem has gone away," will really have any effect on them.

If you compare that to H.R. 7055, it says very simply: Exempt from the Freedom of Information Act is information "obtained, under an express promise of confidentiality, by the Central Intelligence Agency either (A) from a secret intelligence source, or (B) from a foreign intelligence service."

My guess would be that if you handed this one sentence to them and said, "Congress has just passed this," and it is clear that this information is exempt from disclosure under the Freedom of Information Act, insofar as you can effect people's perceptions you do it much more credibly by passing something like this than you do by passing this long, convoluted document which, I would submit, is drafted not by people who are worried about the perception problem in the field but who are litigators in the CIA who are looking for regulations of value to them in court litigation.

This was not drafted by somebody who has to deal with an agent in the field and pursuade him that the information will be kept secret. It was drafted by people who litigate. They put in sentences that are useful to them in their litigation. I would submit it would have no impact on anybody's perception problem at all.

Mr. BUTLER. If we added to H.R. 7055 the sentence from H.R. 7056 dealing with conclusiveness and absence of judicial review, you would not be happy with that, I judge.

Mr. HALPERIN. We would be very unhappy with it.

Mr. BUTLER. That is really what is critical.

Turning that around, you are so overwhelmed by the language in H.R. 7056 that even if we took that language of H.R. 7056 you would not be happy with that.

Mr. HALPERIN. I would say that if you took out the "in each such instance" sentence, the difference between the two would be very small.

Mr. BUTLER. It would be measured more in number of words than in the thrust.

Mr. HALPERIN. The impact, yes. I think the impact, except for that one sentence, of those two amendments is pretty much the same. H.R. 7056 relates also to the design function and deployment of scientific and technical systems. I must say that I have great difficulty understanding how that relates to the perception problem.

As far as I know, no American tactical system has ever refused to cooperate with the CIA because of the fear that its identity would be disclosed. I just do not understand at all what the case is for adding that to the amendment at all. It is certainly not part of the perception problem.

Mr. BUTLER. Would information concerning the design, et cetera, as set forth in H.R. 7056, be impliedly included in H.R. 7055?

Mr. HALPERIN. I think it is already included in 50 U.S.C. 403(d)(3). Intelligence sources and methods are exempt from disclosure under the act. So that——

Mr. BUTLER. We are not caught on paragraph number (7) or the law enforcement problem with that one.

Mr. HALPERIN. No. It is a (b)(3) exemption under the separate statute for protecting sources and methods.

We do not object to it because we do think it is identical with what they already have.

Mr. BUTLER. You mean, it is redundant.

Mr. HALPERIN. If they want it again, it just clutters up the bill, but it does not change anything.

Mr. BUTLER. I think maybe the CIA is dedicated to the proposition that you do not use one sentence when three would do the job.

Mr. LYNCH. I was going to say that, aside from the judicial review problem, which is enormous, the principle difference between H.R. 7055 and H.R. 7056 is that the person who drafted H.R. 7055 is adhering to the current movement for clear legal writing and the person who wrote H.R. 7056 has not been caught up in that yet.

H.R. 7055 is a succinct and direct statement of what someone else took several lines to write.

Mr. BUTLER. It suffers from candor, but that is all right. I appreciate that insight.

Thank you, Mr. Chairman. I yield back.

Mr. PREYER. Thank you.

Along the lines of Mr. Drinan's question of whether there is any way to bring these two differing views together, would you object to a limitation on the court's ability to review decisions to withhold names of informants? That was excluded.

Mr. LYNCH. Just the name or the cryptonym? I would not have any trouble with that at all.

Mr. PREYER. Is there any other sort of limitation of judicial review of Agency decisions on whether to declassify intelligence information that you would find acceptable? For example, would you object to a special court's reviewing such decisions?

Mr. HALPERIN. Yes. I think we think this should be left as it is now in the regular judicial system. There is no reason and no basis for putting this in any special court.

There is no record and, indeed, no allegation of mishandling of this information by the courts. A number of district court judges have engaged in in camera review and we think that process should continue.

Mr. PREYER. Are there any further questions of the witnesses?

Mr. DRINAN. Yes. Has this proposal come up; namely, that all information received by the CIA from foreign intelligence sources should be treated as law enforcement information and that it would have an absolute immunity just as the informants of the FBI cannot be disclosed?

Mr. HALPERIN. No.

Mr. LYNCH. That is one drafting alternative that I know people in this area have thought of. I am not sure why it has not been pursued.

Mr. DRINAN. How would you people react to that?

Mr. HALPERIN. I think there is a much cleaner and more desirable way of handling this; namely, under the Executive order. The Executive order, on classification, says that any information obtained in confidence from a foreign government is presumed to be classified confidential, so that——

Mr. DRINAN. However, that is still subject to judicial review.

Mr. HALPERIN. The only thing that is subject to judicial review is whether the information has been obtained in confidence from a foreign government. The court can inquire into that and must satisfy itself that the information is in fact obtained in confidence from a foreign government. As I read the Executive order and the cases, the court could not make its own independent judgment that the information obtained in confidence from a foreign government could be released without injury to the national defense.

Mr. DRINAN. Would the CIA be satisfied with that?

Mr. HALPERIN. I think what the CIA is satisfied with, as Mr. Lynch has suggested, are changes based on what they think they can get. I think if this committee makes it clear that H.R. 7056 is not going to be reported out or anything like it that they might well be willing to sit down.

As I said, I think one could draft relatively quickly something which would give them something to use to deal with their perception problem without changing the guts of judicial review.

Mr. DRINAN. I thank you once again. I yield back the balance of my time. Thank you, Mr. Chairman.

Mr. PREYER. Thank you. We appreciate very much your being here today, Mr. Halperin and Mr. Lynch. Thank you for your valuable assistance on this problem.

Mr. HALPERIN. Thank you, Mr. Chairman.

Mr. BUTLER. Mr. Chairman, have we had—when Mr. Carlucci was here, he did not have this legislation before him. Is that correct?

Mr. PREYER. That is correct.

Mr. BUTLER. Have we had a comment from the CIA on these bills?

Mr. PREYER. I do not believe that we have, but we do plan to hear from them.

Mr. BUTLER. In another hearing?

Mr. PREYER. Yes.

Mr. BUTLER. All right. Thank you.

Mr. PREYER. We also have statements for the record from Lawrence Wittner, who is associate professor of history at the State University of New York at Albany; and Stephen E. Pelz, associate professor of history at the University of Massachusetts, concerning their views on the Freedom of Information Act in their work. If there is no objection, I would like to introduce those statements into the record at this point.

[The material follows:]

The Commonwealth of Massachusetts
University of Massachusetts
Amherst 01003

DEPARTMENT OF HISTORY
HERTER HALL

May 2, 1980

Hon. Richardson Preyer
2344 Rayburn House Office Building
Washington, DC 20515

Dear Representative Preyer,

I am writing to protest the Senate bill (the shortened Huddleston amendments to existing law reported in the New York Times of this date) which would exempt the CIA from the operation of the FOIA and by implication, the declassification executive order.

My own work on post World War II diplomatic history, and that of numerous other historians and political scientists, depends on the continued operation of the act and the order. Scholars must be able to reconstruct the President's view of the world, if they are to understand and evaluate his actions, and they cannot do so if intelligence reports remain secret. I have used to EO to secure CIA reports on the Korean war era which were not printed in the relevant Foreign Relations of the U.S. volumes.

Exemption would allow the CIA to maintain the secrecy of operations which are a critical part of the record of our foreign policy -- the installation of the Shah, the coups against Diem and Minh, and the OPlan 34A raids on North Vietnam, etc.

Does not Congress need histories by independent researchers to help it decide which kinds of intelligence operations are effective and which are not? Certainly we do not want the CIA to be the sole author of its own history. I strongly urge the House to maintain FOIA intact.

Sincerely,

Stephen E. Pelz
Associate Professor

cc Reps Boland, Cohe
Sens Kennedy, Tsongas

Department of History

State University of New York at Albany

May 11, 1980

Congressman Richardson Preyer
Chairman
House Subcommittee on Government Information
and Individual Rights
B-349C Rayburn Building
Washington, D.C. 20515

Dear Congressman Preyer:

Thank you for inviting me to testify on legislative proposals to exempt the Central Intelligence Agency from the provisions of the Freedom of Information Act.

I am an American historian, specializing in the recent foreign policy of the United States. Since 1967, I have taught courses on the history of American foreign policy at Vassar College, Columbia University, Japanese universities (under the Fulbright-Hays Educational Exchange Program), and at the State University of New York at Albany, where I am currently employed as Associate Professor of History. I am the author of 4 books, 17 articles, and dozens of reviews, most of them dealing with questions of recent American diplomacy. In addition, I am the former president and a member of the executive council of the Conference on Peace Research in History -- a professional organization, concerned with the resolution of international conflict, composed of several hundred scholars.

In my capacity as an historian, I have had frequent occasion to utilize copies of documents obtained from the CIA under the provisions of the Freedom of Information Act. Some of these items, released at the request of scholars and now housed at the National Archives, are CIA studies of past American foreign policy problems and ventures. Other documents I have drawn upon originated with agencies other than the CIA (e.g. the Department of State and the Office of Strategic Services), but were declassified and released for general scholarly use only after scholarly requests elicited CIA authorization. I obtained additional research materials by filing Freedom of Information Act requests directly with the CIA. It is my understanding that none of these documents would have been made accessible to scholars if the latter had lacked recourse to the Freedom of Information Act.

Such materials are of considerable value to scholars, for they enable them to better understand the workings of American

foreign policy, to analyze U.S. motives in dealing with foreign powers, to evaluate the perceptions of the intelligence community, and to assess the practices of foreign organizations and governments. CIA materials, of course, constitute only part of the overall picture. Nevertheless, they are an important part. Without them, the historian makes all too many guesses and, thereby, may badly inform other scholars, policymakers, and the public. For this reason, those concerned with the advancement of knowledge have welcomed the Freedom of Information Act and the opportunity it provides to enhance our understanding of world affairs.

Let me give you an illustration, drawn from my own work. For the last five years, I have been working on a book, just completed, analyzing American policy toward Greece during the 1940s. Although a detailed, scholarly study, it will also be of some interest to a broad audience, for it deals with issues of considerable moment (e.g. the Truman Doctrine and American policy in the Near and Middle East). In this book, one key question with which I have been grappling is the apparent change in American policy from World War II (when it allegedly favored Greece's leftist resistance movement) to the postwar era (when its hard-line approach toward Communist-led forces culminated in the Truman Doctrine). Purportedly, the Office of Strategic Services, which worked most closely with the resistance forces, was quite sympathetic to them. But through a Freedom of Information Act request to the CIA, I obtained files which indicated that the OSS leadership in Washington opposed closer ties with the resistance forces. This fact, coupled with material of a similar nature regarding State Department and White House attitudes, led me to a new appraisal of Washington's wartime dealings with the Greek Left. My findings were published in "American Policy Toward Greece During World War II," Diplomatic History, III (Spring 1979), an article which drew praise and considerable comment from scholars. They will also provide an important part of the first chapter of my forthcoming book, The Americans in Greece, 1943-1949 (Columbia University Press).

From my standpoint -- and that of many other scholars as well -- the major drawback of the Freedom of Information Act, as applied to the CIA, is not its strength but its weakness. Currently, the CIA limits severely the material it releases, citing a variety of national security considerations in justification. Although scholars may avail themselves of an appeal procedure, it does not appear to be very effective. For example, on October 20, 1977, I filed a Freedom of Information Act request with the National Archives for release of a 1946 State Department document that was germane to my work on American policy toward Greece. Although the State Department authorized declassification, the CIA did not. On August 10, 1978, I formally appealed the CIA position. Much correspondence and numerous telephone calls have ensued, but the CIA has yet to act upon this appeal. Such

delay, when added to the exemptions already granted the CIA, indicates that, even without new restrictions on research, the balance is already weighted heavily against free enquiry.

Given the obvious value of research in CIA-originated and CIA-linked documents to a better understanding of American foreign policy, and given the CIA's current ability to avoid disclosure of materials it considers security-sensitive, there seems no good purpose served by exempting the CIA from the provisions of the Freedom of Information Act. This represents my own conclusion, as well as that of numerous scholars. My own organization, the Conference on Peace Research in History, took up this question at a meeting of its executive council on April 26, 1980. At that time, the council voted unanimously to oppose restrictions on the Freedom of Information Act and instructed me to bring this action to your attention.

The state of international affairs is dangerous, indeed, but it is made no safer by establishing new obstacles to scholarly and public understanding of world events. I trust that Congress will give serious consideration to this fact, particularly when enacting guidelines for an agency that is supposed to foster "intelligence."

Thank you again for giving me the opportunity to present testimony on this important issue.

Sincerely,

Lawrence S. Wittner

Lawrence S. Wittner
Associate Professor of History

Mr. PREYER. Next I would like to call on Mr. Lloyd Gardner of Rutgers University and Mr. Athan Theoharis of Marquette University to tell us how historians feel that the Freedom of Information Act has affected their work and whether the law should be changed.

It is a pleasure to have you gentlemen with us today. Your statements will be made part of the record and you may proceed as you see fit. You may summarize your statement.

I recognize Mr. Gardner first.

STATEMENT OF LLOYD C. GARDNER, PROFESSOR, DEPARTMENT OF HISTORY, RUTGERS UNIVERSITY, ON BEHALF OF THE ORGANIZATION OF AMERICAN HISTORIANS

Mr. GARDNER. Mr. Chairman, thank you very much.

Before I read the statement I have prepared—I apologize for the scratchings and changes on it. I was obligated to prepare much of it last night. Before I read it, I would like to comment briefly on this intriguing discussion about perceptions of sources that you went through just a few minutes ago.

I was at Princeton in the last week and the Daily Princetonian, the student newspaper, has been running a series of articles based on information from informants to the CIA known as the Princeton Group. The source of information was the Allen Dulles papers at Princeton University.

The point is simply that, as Mr. Halperin was saying, when you have a political system which is open in most respects, the ability to keep secret informants, even from diligent college seniors who are writing honors papers based on the Allen Dulles papers, is almost impossible. It is almost impossible to protect that kind of source, unless you want to change the political system which would be very difficult.

I am a professor of history at Rutgers University in New Brunswick, N.J. I have been involved in questions relating to public access to Government documents for some time.

A decade ago, in the midst of the controversy over publication of the Pentagon Papers, I delivered the major address at a National Archives conference on declassification policies and procedures, a portion of which was then published on the op-ed page of the New York Times. For 3 years, from 1976 to 1979, I was a designated representative of the American Historical Association on the advisory committee for the Historical Office of the Department of State.

The last year of that term I served as chairman, responsible for writing its annual report. The principal tasks of the committee included not only recommendations in regard to the documentary series, foreign relations, but to the entire area of Government declassification policies.

I appear today on behalf of the Organization of American Historians, for whom I am authorized to speak regarding proposed changes pertaining to the Freedom of Information Act and about evidence of changing attitudes toward declassification generally.

The passage of the Freedom of Information Act reconfirmed a central tenet of constitutional democracy—the public's need and right to have access to information on which Government decisions affecting individual citizens and national policy are based.

The historian in such a society has a special obligation to use that information to establish an accurate record, not simply to fulfill private responsibilities, but indeed to satisfy the demands of national interest and national security, terms often misapplied and misused by overzealous advocates of secrecy.

Legislation introduced in recent weeks in both Houses of Congress designed to limit the application of FOIA in various ways is a disturbing reminder that not everyone understands fully the purpose of that act or is not convinced it works in the national interest. This is a curious development because the exemptions desired for the Central Intelligence Agency will not really help it to prevent the publication of memoirs by former employees.

However that may be, another principal reason for asking for exemption from FOIA concerns so-called foreign-originated, or nongovernment, material in CIA files. The argument is made that informants and intelligence agencies of other nations will not trust the United States with their secrets out of fear that the information will soon enter the public realm.

There are several answers to this objection, First, no responsible historian I know would assume that documents being used in current negotiations should be made available until a proper interval. That this is true is easily demonstrated for, as Mr. Halperin stated, "not one sentence has been released to the public under a court order in circumstances where the CIA has argued that release would injure the national security."

We may well disagree among ourselves about what constitutes a proper interval. Indeed, it is for that reason that the most recent Presidential Executive order reserves certain categories of documents from automatic declassification. The FOIA serves an important purpose in this regard by adding another check or balance to a system still heavily weighted in favor of such restrictions.

The second answer to the objection put by the CIA in requesting exemption from releasing documents originated from sources outside the Government is that it is not a loophole hindering the Agency's effectiveness but a noose that would eventually strangle FOIA. When FOIA first went into operation I pointed out at the National Archives conference that it contained a catch-22 in that a researcher had to know that a document existed before it could be requested. I tested that provision by requesting cable traffic between Washington and Seoul, Korea in the first week of the Korean war.

The request was denied as too broad. Others had similar experiences and changes were made in the administration of the law to insure that this catch-22 did not prevent the original purpose of FOIA from being achieved.

If this exemption is granted, as it is now stated in H.R. 7056, historians and other researchers will be worse off than in the days of catch-22—far worse off for who can say where the limits of such an exemption lie?

The final answer is that if the CIA is granted this privilege, how can it be denied to other agencies? Will the National Security Council, the Defense Department, or the Department of State be willing to take second place in a race to close files and thus subvert Congress intention in passing FOIA? It is not likely.

Indeed, one of my major concerns today is with the disturbing evidence that the CIA's proposed exemption reflects a general change in attitude toward declassification.

In recent weeks many of my colleagues and I have been informed that the notion that foreign-originated information should not be declassified on schedule has been so expanded as to include even conversations with foreign ambassadors.

Volumes in the foreign relations series already compiled, some even in galleys, have been recalled to expunge up to 15 to 20 percent of the documentary material. Thus is this series, the best of its kind in the world, about to be denigrated and brought down to a level just above that of the famous White House papers issued by the Government years ago to justify whatever it was they wanted to justify.

This will be a tragedy if it is allowed to go unchallenged. I am familiar also with other reports from colleagues that the process of declassification of documents at the Presidential libraries has slowed, in some cases almost to a dead standstill.

What an irony it is that this administration, which began with a pledge to open Government, has thus slipped into what might be called charitably passive resistance to declassification.

It is an interesting time we live in in the sense of the ancient Chinese curse, but the post-Vietnam backlash against declassification and against FOIA can only remind the historian of days when kings banished prophets who displeased them and sent messengers bearing bad news to oblivion. Surely, we are not prepared to go that route.

Thank you.

Mr. PREYER. Thank you.

Mr. Theoharis?

STATEMENT OF ATHAN THEOHARIS, PROFESSOR, DEPARTMENT OF HISTORY, MARQUETTE UNIVERSITY

Mr. THEOHARIS. I have already submitted a prepared statement to the subcommittee. Let me say at the outset that, because of the haste involved in the drafting of that statement so that it might reach the subcommittee before these hearings, I have certain additions to make to the statement.

I will briefly summarize the statement but will also make additions which will not be in the prepared statement before you.

My name is Athan Theoharis. I am a professor of American history at Marquette University, specializing in Federal surveillance policy during the cold war years. I thank the subcommittee for inviting my testimony on H.R. 7055 and H.R. 7056, to amend the Freedom of Information Act of 1966, as amended.

Insights I have gained from my research experience as an historian of Federal surveillance policy, which have included the use of the FOIA to obtain FBI files, and formerly as a consultant to the Senate Select Committee on Intelligence Activities, or the so-called Church committee, might prove profitable to the subcommittee and its staff during deliberations on these important legislative measures.

At the outset let me state that I am unconvinced by the claims of harm to the national security advanced by CIA, FBI, and Carter administration officials to justify the proposed amendments to the

FOIA—ranging from the virtually total exemption proposed by Senator Moynihan in S. 2216, the more limited exemptions of S. 2284, and now the even more limited amendments of H.R. 7056. To date no legitimate national secrets have been compromised because of the FOIA.

This is not surprising since the act does contain specific sections permitting the intelligence agencies to exempt from disclosure legitimate national secrets, including information identified as having been received from foreign intelligence services or from identified private citizens and more generally the agencies' sources and methods.

From the point of view of historians whose research in the recent past has been totally frustrated by often capricious national security claims, the FOIA, as amended in 1974, for the first time provided the means to challenge unjustifiable national security claims in a more impartial forum. After 1974 the intelligence agencies could no longer claim national security to exempt from disclosure documents which would disclose their illegal, embarrassing, and political activities. These claims would thereafter be subject to external scrutiny through the courts.

H.R. 7056 proposes to gut this needed safeguard. In welcome contrast, H.R. 7055 does not. For this reason alone, if any legislation is to be enacted for the ostensible purpose of resolving what CIA officials maintain is a "perception" problem of foreign intelligence services who distrust the FOIA, I could support enactment of H.R. 7055.

My objection to measures represented as intended merely to safeguard legitimate national secrets and permits the efficient functioning of the intelligence agencies stems from a concern over the impact of the proposed exemptive legislation on scholarly research and, concomitantly, on our political system of checks and balances. There is, I think, a distinct correlation between H.R. 7056's recommendation to amend the FOIA to permit the CIA and FBI Directors to certify categories of files as exempt frm the FOIA's disclosure provisions and another similarly represented change proffered by the FBI in S. 1612 and H.R. 5030 which would authorize the FBI to "destroy records compiled in connection with an investigation * * * or deposit them in the National Archives for historic preservation * * *."

S. 1612 and H.R. 5030 contain another section which would exempt FBI procedures from the FOIA's mandatory search and disclosure requirements. This is not as innocent an exemption as it appears. The FBI's "Do Not File" procedure for "clearly illegal" break-ins, June mail procedure for "sources illegal in nature," administrative pages procedure for "facts and information which are considered of a nature not expedient to disseminate or would cause embarrassment to the Bureau if distributed," and administrative purposes procedure to safeguard politically sensitive information, for example, would be exempted under this section.

Both H.R. 7056 and S. 1612, and H.R. 5030, accord exclusive and unreviewable authority to FBI and CIA officials to determine which records are to become publicly available, including for historical research. Given the past history of the intelligence agencies, I question whether granting this unreviewable exemption is sound policy.

In my testimony today I shall not discuss the record destruction

section of S. 1612 and H.R. 5030. This legislation is not presently before this subcommittee, although if enacted it will significantly affect future use of the FOIA.

I enclose with this statement a Xerox copy of corrected galley proofs of my forthcoming article in the Judges' Journal, to be published later this month in the spring, 1980, issue. In this article I detail my objection to the proposed unreviewable destruction authorization.

I shall confine my remarks today to H.R. 7056's proposal to exempt specified CIA and FBI documents from disclosure under the FOIA. These exemptions involve:

(a) intelligence obtained from a person, entity or organization other than a person employed by the United States government; (b) information which identifies or tends to identify a source or potential source of information or assistance to an intelligence agency.

Since H.R. 7056 denies the right of judicial review, it is important to understand the criteria which FBI and CIA officials might employ to effect these exemptions, for the nature of this unreviewable certification claim can seriously affect the quality of future scholarly research.

As a historian, I submit that one way to anticipate the criteria and the resultant impact is to review the past practices of the intelligence agencies as these involve their relationship with "a person not employed by the United States Government" or "a source or potential source of information or assistance to an intelligence agency."

From FBI and CIA files released under the FOIA and from the published reports and hearings of congressional committees, notably the Senate Select Committee on Intelligence Activities and this subcommittee, we now have a limited understanding of how in the recent past the FBI and CIA defined the (a) and (b) exemptions.

For example, to disguise the fact that information had been illegally obtained—whether through break-ins, wiretaps, or mail intercepts—FBI officials directed FBI agents to prepare letterhead memorandums, or so-called LHM's, and report that the information had been obtained from a reliable and highly confidential source" or from an "informant." Alternatively, FBI Director Hoover ordered other FBI officials to resort to blind memos, identifying neither the sender nor the recipient, either when reporting information obtained from bugs or when discussing microphone surveillance policy. These memorandums were then filed in FBI Director Hoover's carefully controlled official and confidential file.

Blind memos were also used to furnish information to counsel of the House Committee on Un-American Activities during the 1960's. FBI officials were specifically directed to employ "terminology * * * such that the memorandum cannot be identified as a Bureau document."

An FBI report of 1949 on the National Lawyers Guild, for example, is reprinted verbatim or closely paraphrased in a report on the guild released in 1950 by the House Committee on Un-American Activities. Moreover, in 1969 FBI Assistant Director William Sullivan sent reports from Paris, France, to FBI officials in Washington under a "Do Not File" procedure based in part on a bug installed by a French police agency in the hotel room of syndicated columnist Joseph Kraft.

In addition, we have recently learned that beginning at least in February 1946 FBI officials initiated an educational program to influence "public opinion" by releasing "educational material" through "available channels." The channels included cooperative Congressmen, notably but not exclusively Joseph McCarthy, Karl Mundt, Richard Nixon, and Howard Smith; congressional committees, notably the House Committee on Un-American Activities and the Senate Internal Security Subcommittee; and reporters—notably but not exclusively the Chicago Tribune's Washington bureau chief, Walter Trohan; the New York Herald-Tribune's Washington bureau chief, Don Whitehead; UPI Washington bureau chief, Lyle Wilson; syndicated Hearst columnists George Skolsky, Westbrook Pegler, and Fulton Lewis, Jr.; U.S. News & World Report editor David Lawrence; New York World Telegram reporter Frederick Woltman; Hearst reporter Jim Bishop; and radio commentators Walter Winchell, Drew Pearson, and Paul Harvey.

From FBI files I have received under the FOIA I have learned that the FBI broke into the offices of the American Youth Congress in 1942 to photocopy the correspondence between Mrs. Eleanor Roosevelt and officials of the Congress. These documents were filed in the unserialized official and confidential file maintained in the office of former FBI Assistant Director Louis Nichols.

It might be of interest to this subcommittee, given its 1975 investigation of FBI recordkeeping, that this Nichols file contained a list of "Do Not File" documents recording FBI contacts with Members of Congress and the media.

The CIA, by contrast, subsidized the National Student Association, the research of favored academics, and commercial publishers—including ownership of the Forum World Features. In addition, CIA officials apparently cooperated with Miami News reporter Hal Hendrix and Copley reporter Charles Keely while, in February 1966, CIA Director John McCone sought to convince the New York Times to kill a series of articles on the CIA and later that year Deputy CIA Director Richard Helms convinced the New York Times not to permit book publication of the series since, to quote from Harrison Salisbury's "Without Fear and Favor":

> Newspaper publication had been bad enough; if the series appeared in book form it would be much worse; there would be a permanent, easily accessible record.

Under H.R. 7056 the CIA and FBI Directors would have exclusive authority to certify documents pertaining to these illegal or political activities as exempt from disclosure and these rulings could not be appealed. At least, under H.R. 7055, and the FOIA at present, attempts to exempt such documents from disclosure could be challenged in the courts and be rebuffed since such documents do not meet the criteria of legitimate national secrets.

Given our recently acquired, though undeniably limited, knowledge of the past practices of the FBI and the CIA, I question whether it is sound policy to grant this discretionary exemption authority. Because of the important policy roles of the FBI and the CIA as well as their abuses of power and political activities, we cannot hope to understand the recent past unless we have the opportunity to research FBI and CIA documents.

A case can be made that the available records distort the past, leading us to emphasize Senator Joseph McCarthy's and not the FBI's role in the creation of a McCarthyite politics or the role of the Departments of Defense and State and not the CIA in the formulation and execution of U.S. foreign policy.

Indeed, the conventional wisdom among historians until quite recently was that the CIA's resort to covert operations began during the Eisenhower years with the overthrow of the Mossadegh government in 1953. We now know that CIA covert operations began in 1947 under NSC directive 4A and were refined further in 1948 under NSC directive 10/2 and that in 1949 a special branch was created within the CIA to at least consider assassinations and kidnapings.

These, clearly, are not minor developments and should command the research interests of historians of American foreign relations. To historians of the decisionmaking and of the Office of the President, the evolution of the CIA's operational role from intelligence coordination to intelligence collection to covert operations is equally of great import.

Knowledge of the policy role, scope of investigative activities and techniques, and political activism of the FBI and CIA would not merely be of interest to academics and antiquarians. Indeed, such knowledge of the historic role of the intelligence agencies, based on research into primary sources, can be of considerable value to the Congress at a time when legislative charters are being formulated and in the future when the effects of such charter legislation will be evaluated.

As important, such published research can also provide indirect assistance to the oversight mission of the House and Senate Intelligence Committees.

If H.R. 7056 appears limited and benign on its face, its enactment could have a devastating impact on historical research. Ironically, at a time when research involving the historical role of the FBI and the CIA can only now be initiated, to a great extent because of the FOIA, H.R. 7056 would in effect partially restore the pre-1974 access restrictions. For, until the enactment of the 1974 amendments to the FOIA all FBI and CIA documents had been classified and were not accessible for scholarly research.

These classification restrictions were so capricious that even FBI documents pertaining to the Bureau's surveillance role during the World War I period and August 1923 investigation of the fraudulent Zinoviev instructions were closed. In addition, during the early 1960's, FBI officials successfully pressured the National Archives to withdraw from Department of Justice and American Protective League files all documents and copies of documents pertaining to FBI investigations of the World War I period.

To date historians might not have extensively used the FOIA to obtain FBI and CIA files. This limited use was a necessary byproduct of the absolute classification of all FBI and CIA files.

Only recently have historians learned about some of the activities which I referred to in my statement. This recent knowledge has derived from reports and hearings of congressional committees. I would anticipate that, based upon our use of the FOIA, we will be able to identify additional documents and programs that might very well

highlight the incompleteness of the first-rate congressional investigations of 1975 and 1976.

I thank the subcommittee for inviting my testimony but also for its decision to hold public hearings on these important legislative measures.

Mr. PREYER. Thank you very much.

Without objection, the material you supplied with your statement will be included in the hearing record at this point.

[The material follows:]

Squirelled amidst the obviously more important provisions of the Federal Bureau of Investigation Charter Act of 1979 (S. 1612),[1] is an apparently innocuous provision outlining procedures for the "destruction of [FBI] information." This section stipulates: "The FBI shall destroy records compiled in connection with an investigation conducted pursuant to section 533 [of the proposed charter legislation] *or* deposit them in the Archives of the United States for historic preservation pursuant to section 2103 of title 44, United States Code, ten years after the termination of the investigation if there is no prosecution or ten years after termination of prosecution unless. . . ."[2] (Emphasis added)

On its face, this would seem to authorize FBI officials to destroy unneeded information contained in the Bureau's voluminous files. However, the actual effect of this proposd section would be to repeal the mandatory record retention and external review requirements of the Federal Records Act of 1950.[3] Reaffirming the earlier Records Disposal Act of 1943,[4] the 1950 Act mandated the creation and preservation of "records containing adequate and proper documentation of the organization, functioning, decisions, procedures and essential transactions of the [federal] agency and to furnish the information necessary to protect the legal and financial rights of the government and of persons directly affected by the agency's activities."

To insure compliance with thes legislative provisions, the Code of Federal Regulations[5] directs federal agencies to maintain complete records "to the extent required (1) to facilitate informal action by the incumbents and their successors in office; (2) to make possible a proper scrutiny by the Congress, other duly authorized agencies of the Government, and other persons properly and directly concerned of the manner in which public business has been discharged; and (3) to protect the financial, legal, and other rights of the Government and of persons affected by the Government's actions." Among the regulations detailed to preserve complete records were that agency heads cooperate with the General Services Administrator (GSA)—in reality, the National Archives subdivision—to develop records management techniques that would preserve a permanent and complete historic record, establish safeguards against destruction or loss of documents, notify the GSA of any unlawful removal of records, and initiate action to recover unlawfully removed records.[6]

In effect, the proposed changes under section 553c of S. 1612 would immunize the FBI from the external review requirements of the Federal Records Act of 1950 and from the attendant provisions of the Code of Federal Regulations. If S. 1612 is enacted, the FBI would no longer have to secure external National Archives approval to destroy documents. FBI officials alone would determine which FBI documents (1) were of historic value, or (2) would facilitate future congressional oversight, or (3) would "protect the financial, legal, and other rights" of citizens who might be affected by FBI actions.

Should the FBI be accorded this discretionary authority? Why, moreover, have FBI officials sought to exempt the FBI from the external review requirements of the Federal Records Act of 1950?

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[1] Drafted by FBI officials and introduced on July 31, 1979, by Senator Edward M. Kennedy on behalf of the Carter administration.

[2] *Id.*, p. 27, lines 5–22.

[3] 44 U.S.C. 3301 et. seq.

[4] Id.

[5] 41 C.F.R. 101–11.1 et seq.

[6] The relevant sections from the Act and the Code are quoted and discussed in "Final Report of the National Study Commission on Records and Documents of Federal Officials" (Washington: U.S. Government Printing Office, 1977), pp. 17, 81–84.

At the outset, it should be noted that the FBI had not always complied with the Federal Records Act's records retention requirements. As early as 1940, FBI officials devised separate filing procedures to permit the destruction of FBI documents recording "sensitive," "clearly illegal," and "potentially embarrassing" FBI activities. (These procedures have since been refined and extended.) Such documents were not to be serialized, hence, because no retrievable record would have been created of their existence, they could be safely destroyed. In addition, documents created under these procedures were to be filed separately from the FBI's central files and were to bear the notation either "Do Not File" or "This Memorandum is for Administrative Purposes—To be Destroyed after Action is Taken and Not Sent to Files." [7]

Despite these safeguards, the FBI did not destroy all such politically sensitive documents. Thus, some "Do Not File" break-in documents recently were discovered in the personal safes of the New York and the Chicago special agents in charge (SACs). Other FBI documents involving Alger Hiss and the National Lawyers Guild, originally created under the "Administrative Purposes" procedure, were later transferred [8] at the direction of FBI officials either to the central files or to other retrievable files. Because they were retained, these documents were vulnerable during the 1970's to demands for the production of all relevant FBI documents whether under specific court-ordered discovery motions or Freedom of Information Act suits.[9] The public release of these records, in combination with still other sensitive FBI files, was deeply embarrassing to the FBI, highlighting as they did the FBI officials' past abuses of power and conscious political activism.

When either transferring or preserving sensitive "Do Not File" documents, FBI officials had confidently assumed that FBI files would always remain sacrosanct. Until the 1970s, in fact, all FBI files were classified, including dated files such as those recording the FBI's surveillance role during World War I and the FBI's August 1923 investigation of the fraudulent Zinoviev Instructions. During the 1960s, moreover, FBI Director J. Edgar Hoover succeeded in having withdrawn and classified for the purpose of national security those copies of FBI documents contained in the Department of Justice's World War I files already deposited in the National Archives.[10] FBI officials had not anticipated that Congress might enact legislation, the amended Freedom of Information Act [11] that permitted public access to FBI files.

This unanticipated problem bedeviled FBI officials during the 1970s. To contain historians and interested researchers from being able to gain access to the FBI's extraordinarily detailed but politically explosive files, FBI officials sought to purge the Bureau's files. Thus, in May 1975, FBI officials submitted a plan to the National Archives for the destruction of "Closed [field office] files of the Federal Bureau of Investigation containing investigative reports, inter- and intra-office communications, related evidence . . . collected or received during the

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[7] I have discussed these separate filing and record destruction procedures in *Researching FBI Files: Unanticipated Problems,* in Athan Theoharis (ed.). BEYOND U.S. v. ALGER HISS: THE FBI, CONGRESS, AND THE COLD WAR (Forthcoming, 1980). *See also* my earlier writings on this issue: *Bureaucrats Above the Law: Double-Entry Intelligence Files,* THE NATION (October 22, 1977). pp. 393–396; SPYING ON AMERICANS: POLITICAL SURVEILLANCE FROM HOOVER TO THE HUSTON PLAN (Philadelphia: Temple University Press, 1978), pp. 32, 39, 43–44, 48, 94, 102, 105–107, 112, 114–116, 121–122, 125, 132, 156, 185, 191–194, 269 n. 20, 275 n. 61, 276 n. 66, 281 n. 1; and *The Problem of Purging FBI Files,* USA TODAY (November 1978), pp. 48–50.

[8] The particular documents involving Alger Hiss were created in 1946 and were then filed in FBI Associate Director Clyde Tolson's "personal files" but were transferred in 1949 to FBI Director Hoover's "Official and Confidential" files; those involving the National Lawyers Guild were created in 1949 but were transferred in 1958 to the FBI's central files.

[9] NELSON BLACKSTOCK. COINTELPRO: THE FBI'S SECRET WAR ON POLITICAL FREEDOM: (New York: Vintage, 1976), pp. 1x, 204–211. Chicago Sun Times, Feb. 3, 1979, p. 10. Unsigned [blind] Memo, Not for File, January 10, 1966, FBI Chicago field office files, Chicago Committee to Defend the Bill of Rights. Memos, Hoover to Tolson, Tamm, Ladd, and Clegg, March 19, 1946, and Hoover to Tolson, Tamm, and Ladd, March 20 and 21, 1946, all FBI 62–116606–1; Undated routing slip, Hoover to Tolson, Ladd, and Nichols, FBI 1478; Memo, Ladd to FBI Director, December 10, 1948, FBI 1478; Memo. Ladd to FBI Director, December 13, 1948, FBI 1479; Undated routing slip, Hoover to Tolson, Ladd, and Nichols, FBI 1479; Pink Memo, Ladd to FBI Director, December 28, 1948, FBI 1480; Memo, Ladd to FBI Director, December 28, 1948, FBI 1733; all in FBI Files, Alger Hiss, Memo, Nichols to Tolson, June 28, 1949, FBI 1669, FBI Files, National Lawyers Guild.

[10] JOAN JENSEN, THE PRICE OF VIGILANCE (Chicago: Rand McNally, 1968), p. 314; MELVYN DUBOFSKY, WE SHALL BE ALL (Chicago: Quadrangle, 1969), p. 539; SANFORD UNGAR, FBI (Boston: Atlantic Monthly/Little Brown, 1976), pp. 373–375, 383–386; and P. BLACKSTONE, AGENTS OF DECEIT (Chicago, Quadrangle, 1966), pp. 96–97.

[11] 5 U.S.C. 552.

course of public business in accordance with the FBI investigative mandate." Arguing that the FBI's headquarters files essentially duplicated "in whole, substance, or summarization" all "substantive" information in the field office files, on March 26, 1976, FBI officials obtained formal authorization from the National Archives to destroy field office files.[12]

Because the National Archives had not independently reviewed FBI field office files, and thereby could not independently ascertain that under this plan important policy documents would not be destroyed, critics of this authorization were able to temporarily delay its implementation. FBI field office files involving the Alger Hiss and Julius and Ethel Rosenberg investigations, released prior to the implementation of this proposed record destruction plan, confirmed that the FBI's headquarters files did not duplicate field office files. In addition, FBI officials in 1975 had advised the Senate Select Committee on Intelligence Activities that break-in documents could not be produced because all such documents had been destroyed under the "Do Not File" procedure, but break-in documents were discovered in 1976 and 1979 in field office files.

To further conceal its involvement in illegal investigative activities, the FBI devised other reporting procedures including the use of Letterhead Memorandums (LHMs) and the "June" notation. LHMs were to be used whenever agents conveyed information to FBI headquarters which had been illegally obtained (through break-ins or illegal wiretaps, for example). Under this reporting procedure, the source of the information was to be camouflaged as having been obtained through "informants" and was to be obtained through "informants" and was to be reported in such a way that the illegal method was not traceable. Documents reporting information obtained from sources "illegal in nature" (wiretaps or microphones installed by means of break-ins) were to be sent to the FBI director bearing the "June" notation.[13] Clearly, then, headquarters files did not duplicate field office files—although the relevant information obtained through the particular investigation might be duplicated. Purging the field office files, however, would mean the destruction of a record that could confirm the extent of the FBI's illegal activities. As such, the field office files contain non duplicated documents of "substantial" historic value.

When the National Archive's decision to authorize the FBI's field office destruction plan was publicized, the resultant criticism impelled Archives officials to conduct a purportedly thorough review of the rules and procedures governing the destruction of FBI field offices files. Despite the evidence of the historical value of the field office files, the National Archives concluded that the FBI's headquarters files essentially duplicated field office files and that its investigation of FBI investigative procedures and rules "clearly shows that administrative procedures and investigative practices applicable to field offices creates [sic] information that more than adequately documents cases forwarded to FBIHQ [FBI headquarters]."

When I wrote to the National Archives and the FBI to challenge these findings—citing instances of the discovery of break-in documents in field office files, identifying the incompleteness of the FBI's central files owing to the "Do Not File" procedures, and that the intent of the LHMs was to disguise how information had been illegally obtained by FBI agents—Thomas Wadlow, the director of the National Archive's Record Disposition Division, in effect reaffirmed the findings and then (amazingly) cited my example of the LHMs as confirmation.[14]

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[12] John Rosenberg, The FBI Would Shred the Post, THE NATION (June 3, 1978), p. 653. Letter, Bella Abzug (Chairwoman, House Subcommittee on Government Information and Individual Rights) to Daniel Inouye (Chairman, Senate Select Committee on Intelligence), June 4, 1976 (Xerox copy in authors possession).

[13] Memo, W.A. Branigan to A. H. Belmont, May 28, 1954, FBI 66–1372–11. Theoharis, *Bureaucrats Above the Law*, p. 394 and *The Problem of Purging FBI Files*, p. 48; *John Rosenberg, The FBI Shreds Its Files: Catch in the Information Act.* THE NATION (Feb. 4, 1978), pp. 108–111 and *The FBI Would Shred the Past*, pp. 653–655; John Elliff, *The FBI and Domestic Intelligence*, in Richard Blum (ed.), SURVEILLANCE AND ESPIONAGE IN A FREE SOCIETY (New York: Praeger, 1972), pp. 26–27, 30–31. BLACTSONE, COINTELPRO, pp. ix, 204–211; Chicago Sun Times, Feb. 3, 1979, p. 10.

[14] John Rosenberg, *Follow-Up; The FBI's Field Files*, THE NATION (March 3, 1979), pp. 231–232. Office of Federal Records Centers, National Archives and Records Service (NARS), "Disposition of Federal Bureau of Investigation Field Office Investigative Files," December 1978. Letters, Athan Theoharis to National Archivist James Rhoads, April 23 and May 4, 1979 and reply May 9, 1979: Letter, Jean Fraley (Acting Director, Records Disposition Division, NARS) to Athan Theoharis, May 15, 1979 and copy of letter, Fraley to James Awe (Chief, Records System Section, FBI), May 15, 1979; Letter, FBI Director William Webster to Athan Theoharis, June 15, 1979 and reply June 5, 1979; Letters, Athan Theoharis to Thomas Wadow (Director, Records Disposition Division, NARS), May 23, August 24, and September 4, 1979 and reply August 28, 1979.

Concurrent with this National Archives review, the FBI on May 4, 1977, submitted another record destruction plan to the National Archives to spell out which of the Bureau's "obsolete" headquarters files were to be sent to the National Archives for permanent retention and which were to be destroyed. In an interview with Los Angeles reporter Ron Ostrow, James Awe, the author of this FBI headquarters destruction plan, aptly characterized the preservation procedure, saying: "Basically it down to [retaining] cases of national media attention." Thus, while the FBI plan would preserve files in five identified categories, even within those categories "files with five or less volumes would generally not meet the criteria for a significant investigation or case and will be destroyed after a review, to insure compliance with criteria, by an experienced [FBI] employee."

The FBI also proposed to destroy "Security investigative files with supporting retrieval devices after 30 years of no relevant activity." The FBI not only sought exclusive reviewing authority to determine which records were of historical significance but through the proposed destruction of "retrieval devices," the FBI also could effectively avert discovery of its separate filing procedures and the specific location of these records, since sensitive, separately filed documents were cross-referenced in the FBI's case files for ready access.

In contrast to its earlier approval of the field office destruction plan, the National Archives deferred action on the headquarters destruction plan. Instead, relying on provisions of the Code of Federal Regulations mandating consultation when in the public interest or when records would be of special interest to the Congress, National Archivist James Rhoads solicited congressional advice. Assigned responsibility to review this plan, the subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee scheduled hearings for June 1978. These hearings, however, were postponed and have yet to be held. As one result, the FBI's headquarters destruction plan is still pending.[15]

One can well understand why the FBI would seek authorization to purge its files and avert any external scrutiny of its record-destruction criteria, but the National Archives's obvious reluctance to assume its reviewing responsibilities would seem perplexing. An internal FBI memorandum of June 7, 1976, written by A. J. Decker (assistant director in the FBI's Records Management Division) to FBI Deputy Associate Director Thomas Jenkins, however, highlights why, absent protest by the public or the Congress, an intentionally incomplete historic record will be preserved. This memorandum warrants lengthy quotation:

It now appears timely for the Bureau to reevaluate requirements for the retention of file material at FBIHQ beyond certain specified time periods and to consider the retention period of 10 or 20 years after a case has been closed. The Bureau has not previously sought destruction of investigative records of substance at FBIHQ on the basis they were needed for reference in connection with investigative and administrative needs and to satisfy requirements under Executive Order (EO) 10450. . . . Additionally the National Archives and Records Service (NARS) placed an indefinite retention period on all basic violation categories because of their historical significance. NARS is now reluctant to accession records in large volume due to complications encountered as a result of the Freedom of Information and Privacy Acts and *records they previously felt should be retained for historical reasons are now being reevaluated* since they would be responsible for responding to requests if they took control of the records. . . .

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Current NARS Policy. A representative from NARS in a recent discussion regarding records expressed reluctance on the part of Archives to accession additional records in large volume due to complications encountered as a result of the Freedom of Information and Privacy Acts. . . . Accordingly, many records which NARS *previously felt should be retained* because of historical significance *are not receiving the same interpretation today* because of the complications and burdens of these Acts.

According to the current Records Retention Plan approved by NARS, there are many categories of records the FBI is prohibited from destroying and once it is determined the records no longer serve a valid purpose for FBI responsibilities, the Bureau would be obligated to forward them to NARS for permanent reten-

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[15] Theoharis, *The Problem of Purging FBI Files*, p. 48; Rosenberg, *The FBI Would Shred the Past*, pp. 653–655; Ron Ostrow, *Some Researchers Oppose Destruction: FBI Plans to Pound Obsolete Files into Pulp*, Los Angeles Times, March 13, 1978, pt. II, p. 8.

tion because of their historical value. . . . NARS can exercise their option to retain the records if they believe they contain historical significance.

This position is now subject to reevaluation and there is an indication that NARS will not be interested in obtaining the many categories of records that were initially listed in the Records Retention Plan for historical reasons because of the burdens and complications of the Freedom of Information and Privacy Acts. . . . They most likely would now authorize the destruction of these records once the Bureau determined they no longer serve a useful purpose.[16]

The Freedom of Information Act might have been based on the democratic principle of the public's right to know and thereby might for the first time have permitted scholarly research into heretofore closed FBI files. As both the June 7, 1976, FBI memorandum and the proposed section 533c of S. 1612 confirm, neither the FBI nor the National Archives endorses these principles and both are committed to circumventing the FOIA's access requirements.

Mr. PREYER. Let me ask each of you as historians this. Have you ever sought or obtained under the Freedom of Information Act the names, official titles, salaries, or number of personnel employed by the CIA?

Mr. GARDNER. My answer is, "No, sir." I have not.

Mr. THEOHARIS. No, nor have I, because my research interest is the FBI. I would not be interested in that information as a historian.

Mr. PREYER. The point is that historians are not interested in Agee-like disclosures about the CIA. That is not the mission for which you seek information, I hope.

Mr. THEOHARIS. We are interested in, what would seem to me to be, the very general language of sections (a) and (b) of H.R. 7056; namely, what constitutes a source or potential source of information or assistance.

Very indirectly my statement sought to address that. I perceive H.R. 7056 as excluding from disclosure important documents that, I think, would prove to be very embarrassing to intelligence agencies if they were released.

H.R. 7055 does not.

Mr. PREYER. That is right.

Your answer is that you do not mind embarrassing the CIA where it ought to be embarrassed, but you are not out to get the CIA in the way Agee is by revealing the names of sources of agents around the world, and that kind of thing.

Mr. THEOHARIS. No; but we are interested in researching important programs, procedures, and activities of the agencies. As I read H.R. 7056, a category of files would be exempted without judicial review which would be released if we had judicial review. These would not

[16] Memo, A. J. Decker to Jenkins, June 7, 1976, FBI 66-??86-1197, produced in response to discovery motion in suit American Friends Service Committee, et. al. v. William Webster, et. al. Civ. 79-1655. June 1979. *See also* undated News Release of FOIA, Inc. (36 W. 44th St., New York, New York 10036) on this suit brought by 51 individuals and organizations to enjoin the FBI and the National Archives from destroying FBI field office files. On January 10, 1980, Judge Harold Greene ruled in favor of the plaintiffs, ordering the National Archives and the FBI to prepare within 90 days a disposal plan which would insure the preservation of FBI field office files of "historical value." Milwaukee Journal, January 11, 1980, p. 2. *The Chronicle of Higher Education*, 19 (Jan. 21, 1980), pp. 1, 4.

In public hearings conducted by The House Subcommittee on Government Information and Individual Rights, moreover, staff counsel Ed Gleiman queried Acting Archivist James O'Neill about the June 7, 1976 FBI memorandum. O'Neill claimed that the FBI memorandum did not accurately convey NAR's position. There was no policy change, the NARS simply would not accession files "as long as there is a significant volume of [FOIA] activity." Not convinced by this explanation, Gleiman requested all NARS and FBI correspondence "on this matter" and the name of the NARS representative cited in the memorandum. O'Neill lamely responded: "I do not know the names of the NARS representative." Undeleted transcript, U.S. House Committee on Government Operation, Subcommittee on Government Information and Individual Rights. *Hearings on National Archives and Records Service*, November 8, 1979, pp. 76-78.

pertain to the language of your bill; namely, to a secret intelligence source or foreign intelligence agency.

As I thought I stated indirectly, if the agencies defined these as sources or assistance they would be exempt under H.R. 7056.

Mr. GARDNER. May I give another example of the kind of thing that I think is creeping in here? One of my colleagues, Prof. Walter LaFeber, of Cornell University, had a student who was working on the reaction abroad to the publication of the Pentagon Papers.

At the time that Pentagon Papers were published criticism was made by the Government that this would affect current negotiations and embarrass foreign governments. Using the FOIA this student obtained from the Department of State the information that they had in fact solicited complaints from foreign governments in order to establish the point that they sought to make; namely, that this was embarrassing. They had only received one complaint from Canada about the naming of an official.

The language in H.R. 7056 yields itself to that kind of solicitation of complaints from other governments which goes beyond the perception problem we talked about this morning. It is an attempt to create grounds against the release of information, grounds which may not be valid at all.

Mr. PREYER. Let me ask you one other more specific question. On May 6 of this year the CIA proposed a rule to limit special privileges that have been enjoyed by security cleared historians in obtaining classified information by the Agency. Their proposed rule implies that historians should first ask that information be declassified under the Executive order.

How would this effect your research if it were put into effect?

Mr. THEOHARIS. It would really have a crippling effect. If we begin with the point I tried to make that we did not know what the CIA was doing in the past and we have a limited understanding, based upon the reports and hearings of congressional committees. We can now use the mandatory review provisions of the Executive order to ask for the declassification of those documents.

However, if at the same time you have a situation in which the intelligence agencies have these separate filing procedures—both the CIA and the FBI—there is no way that we can receive a full record unless we employ the mandatory search and disclosure provisions of the FOIA.

I think we come back, then, to this legislation as enabling us to request and to secure a fuller record of the past activities and policy decisions of the intelligence agencies which is not possible—if you had asked me, for example, whether the FBI's preventive detention program is based upon the McCarran Act of 1950, 5 years ago I would have said, "Yes, it was." However, as a result of the Church committee's reports we found out that the FBI in conjunction with the Department of Justice had initiated a program in 1948 under different standards.

Therefore, I would not have been submitting requests for documents that pertained to an earlier initiated program because I would have had no such knowledge.

Under the FOIA you can submit requests for all documents pertaining to anything under the detention programs and those documents

will have to be released. In that sense, I think we will have a fuller record that will circumvent these separate filing procedures that the agencies have resorted to and a more accurate record as well.

Mr. PREYER. Thank you.

Mr. Drinan?

Mr. DRINAN. Thank you, Mr. Chairman.

I wonder if both witnesses would respond to this: namely, that in H.R. 7055 there is added a 10th exemption to the FOIA which would ban the release of information—

> Obtained under an express promise of confidentiality, by the Central Intelligence Agency either (A) from a secret intelligence source, or (B) from a foreign intelligence service.

The Society of Journalists, whose statement we have, feel that they could go along with that. I wonder if both witnesses will comment on that proposed 10th exemption.

Mr. GARDNER. Historians work on a longer range than journalists do generally. If this law is to be interpreted as reaching back 40 or 50 years, then I do not think historians would be particularly happy about it, particularly if we are talking about questions pertained to the origins of World War I from intelligence services to the German Government, the Austrian Government, and so on.

I do not think historians could live with it if it were so unlimited so that it could just go on forever.

I think that many personnel files and intelligence files at the Department of State are now classified for 50 or 75 years, but there is no permanence. Under that kind of a restriction presumably you could never——

Mr. DRINAN. Assuming that there is some statute of limitations, would you feel that this 10th exemption would meet Mr. Carlucci's objectives without completely shielding the CIA from public scrutiny?

Mr. THEOHARIS. I could. I have no problem with H.R. 7055.

In the past, as historians, we have confronted the classification of documents. What the FOIA permitted us is the ability to challenge improperly classified documents. That was a tremendous boon to historical research. That is a point that I would like to make and emphasize.

I have no problem with H.R. 7055. I could support it. My problem is with the language of H.R. 7056, which I think is open ended. I do not think it is restrictive.

I see that assistance from sources as enabling the agencies to deny to release information which could be simply embarrassing and not involve the national security.

Speaking only as one historian, not for the profession, I have no problem with endorsing H.R. 7055.

Mr. DRINAN. Thank you.

On another topic, how efficient is the CIA in locating all of these things? I have had a little bit of experience and they seem to be very slow. I do not think that they know where some of these things are. I am not sure that they have classified them or indexed them through the years.

What is your experience?

Mr. THEOHARIS. When John Blake testified before the Senate subcommittee he noted the difficulty—he was the former acting CIA Director in 1977. That was before the Administrative Practices and Procedures Subcommittee. He noted the difficulty the CIA confronts because they do not have merely a centralized record system.

Describing the CIA's filing procedures, Acting CIA Director Blake stated that:

> Within the Agency, there is no single centralized records system. For reasons of security and need-to-know, there are a number of records systems designed to accomplish the information retrieval needs of the various Agency components and the Agency's clients.

Continuing, the Acting CIA Director described the difficulties this complicated filing system posed to the CIA when processing FOIA requests:

> The CIA's principal business is the collection and production of intelligence. The Agency's files are set up to accomplish this purpose. Since much of the Agency's business is, by necessity, secret, the FOIA requestors on a certain subject cannot describe these records with precision. Thus, the very first step in processing FOIA requests, that of searching for and identifying records, is often complicated and difficult.

That is a serious problem. That is why FOIA, in its importance to historians, is great legislation, because CIA officials are mandated to do that full record search. Under that mandate we are assured of receiving a full record of their past activities.

If it is because of their separate filing procedures that there is this dilatory response to FOIA requests, that is inevitable. If, as Mr. Halperin suggested, there is a strategy of awaiting the amendments to the FOIA so that they do not have to honor the requests, that is another matter. I have no way of answering that because I am not knowledgeable.

Mr. DRINAN. Mr. Gardner?

Mr. GARDNER. There is a related problem here. I think some historians would make the argument that the FOIA perhaps, impedes regular declassification procedures. That is, if the Government can simply wait out FOIA requests it will slow down its regular declassification procedures.

I think there is some merit to this objection. It was raised by Professor Kirkendall in his testimony before the Senate Intelligence Committee.

The FOIA is not perfect for historians by any means, because there are all kinds of dodges. I remember one time I had given an address at a convention in New Orleans when a representative from the NSA, which is even more secret than the CIA, came up to me and said:

> I was not even supposed to come to this convention. I finally convinced my supervisor that I should. I could not wear a badge saying that I was NSA. I can tell you that the declassification problem goes all the way back pre-World War II. We have stuff at NSA on Japanese documents before World War II that are really dynamite.

I have no way of knowing whether or not this is true. FOIA has really hardly touched NSA at all compared to the CIA.

I would hate to see us assume that simply leaving the FOIA in place is a satisfactory answer to the burgeoning problem of declassification. It is not.

In my statement I tried to talk about changing attitudes toward declassificaion, which I find very alarming at the present time.

Mr. DRINAN. I thank you both for your very helpful testimony. I yield back the balance of my time.

Mr. PREYER. Thank you. Mr. Butler.

Mr. BUTLER. I have no questions.

Mr. PREYER. Mr. Evans?

Mr. EVANS. I have no questions either, Mr. Chairman.

Mr. PREYER. Thank you.

We appreciate your being with us today. Your comments have been very helpful.

Our next witness is Mr. William Corson, who has written on intelligence operations and who brings us the perspective of someone who has been detailed as a military man to the CIA.

Our final witness is Mr. Robert Lewis, who can tell us about the needs of journalists who use the Freedom of Information Act to obtain intelligence information.

Mr. Lewis, would you mind joining Mr. Corson here at the table. We will treat you as a panel.

It is good to have you here today. First we will call upon Mr. Corson. Your statement will be made a part of the record and you may summarize it as you see fit.

STATEMENT OF WILLIAM R. CORSON

Mr. CORSON. Mr. Chairman, thank you for the opportunity to express my views about contemplated moves designed to limit public access to Government information currently available under the provisions of section 552 of title 5, United States Code, known as the Freedom of Information Act.

First, let me say that these views are based on my 26 years of service as a career marine during which I served in a wide variety of operational and staff intelligence assignments both in the Department of Defense and with other members of the so-called intelligence community.

Second, since my retirement in 1968 I have maintained my interest in intelligence matters and have written several books which deal with the problems, policies, and uses of intelligence, the most recent being the "Armies of Ignorance: The Rise of the American Intelligence Empire," published in 1977 by the Dial Press.

Finally, I come before you as a citizen who is deeply concerned that the CIA's attempt to further restrict FOIA access to its files, indexes, and documents is a bureaucratic Trojan horse.

Admittedly, all of the agencies and departments, from the Agriculture to the Veterans' Administration, would prefer not to be burdened with the task of responding to the public's requests for information. Nonetheless, the FOIA is the law of the land and as such it compels Federal agencies to provide the means and procedures to make information available to the public unless it comes within one of the specific categories of matters exempt from public disclosure.

That said, the question arises whether the CIA, or any other agency of the intelligence community, should be provided with further exemptions.

My immediate response is: I think not. The CIA's case, in my opinion, reflects the Scottish verdict—not proven.

Based on my experience and that of others in requesting and/or using material provided under FOIA by the CIA, there is no evidence to suggest that our national security or the Agency's sources and methods have been imperiled or compromised.

If, on the other hand, the issue is one of CIA embarrassment put to the revelations of ineptitude, then the FOIA is clearly a culprit. Through use of the act scholars, historians, and journalists have been able to contrast the public rhetoric surrounding events with what was actually believed and happened. This, in my judgment, is a positive value.

It is more than an exercise in revisionist history. Rather, it provides the means to evaluate what went wrong, or right, and why. These questions cannot be left to the tender mercies of those who have a proprietary interest in their agency, their position, and prospects for promotion.

Recent books—such as Joseph Wyden's "Bay of Pigs," William Shawcross' one about the secret bombing of Cambodia, and David Martin's "Wilderness of Mirrors" which deals with the CIA's fruitless search for a mole—underscore the worth of the FOIA in providing our people with a more accurate rendition of events and the roles of those involved.

Besides this, there is the worth in really knowing the past as a means to deal with a difficult present and a more uncertain future.

The FOIA is no magic elixir. To be sure it is helpful. However, by themselves Government documents rarely provide the whole story. To get the whole story one must pursue the leads and persons revealed in those documents.

Compliance with the FOIA varies from agency to agency. Here the issue is largely one of reconciling the letter and spirit of the law with the bureaucratic interests and tendencies of the respective agency.

In the case of the CIA, its responses to FOIA requests are predictably unpredictable. Sometimes information which is potentially embarrassing is freely given. Other times one must literally get into a running battle to get information which on the surface poses no embarrassment to the CIA or the U.S. Government.

Similarly, woebetide the FOIA requester who attempts to fish in the CIA's waters if he or she does not know precisely the name, rank, and serial number of the quarry they seek, especially if that quarry might lead to something the Agency prefers to keep from public view. In such a case the CIA will frequently say, "No, you cannot have the information for thus and so reasons," adding, "You have the right to appeal and if the answer is still No you can go to court." This response effectively stops most persons because the time and cost involved in forcing the CIA to justify its decision is more than they can afford.

Though I understand the bureaucratic imperative which underlies the CIA's response to FOIA requests, I neither believe it serves the Agency's true interests nor those of the U.S. Government. Here, let me say that I believe that secrecy for the sake of avoiding an assessment of intelligence operations and estimates which went awry or were in error is an egregious error.

Intelligence post mortems need to be accomplished and the FOIA exists to enable other than those whose reputations may be involved to carry them out.

In denying some FOIA requests, the CIA is clearly worried about where divulging a specific item of information may lead. This is understandable.

Unfortunately, however, denial on those grounds leads to a skepticism and disbelief in the Agency's commitment to the public's right to know within the FOIA's limits. For example, we were denied information by the CIA concerning the activities of a Soviet agent thought to have been the control of British spies Burgess and McLean during the period 1944–51 when all three were stationed here in Washington.

Without going into the specifics which lead to the request, the Agency's denial was broadly based on the Soviet agent's rights under the Privacy Act. I can only wonder in this matter who or from whom the CIA is protecting me and those members of the public with a continuing interest in the machinations of the Soviet KGB here and elsewhere in the free world.

One can also measure the sensitivity or potential embarrassment of an FOIA request to the CIA by the amount of delay it engenders. Admittedly, a backlog of FOIA requests does exist at the CIA. However, this does not explain fully why some requests are acknowledged more rapidly than others. Here, I am not talking about the response—that is, the actual reproduction and sending of requested information—but rather the notice saying, "We have your request and it is being studied" "or acted upon," and so forth.

In several instances which involved 3 to 4 months' delay before receiving any reply, it was clear to me that the request had set off alarm bells and whistles among those in the Agency who were caught between the rock of keeping dubious secrets and the hard place of the FOIA.

I imght add that one way the CIA could clear much of its FOIA request backlog is to become a more actively willing participant in the interagency declassification process. Much of the information the CIA is nattering about has long since belonged in the National Archives rather than being a current bone of FOIA contention.

The difficulties in using the FOIA to get information from the CIA are understandable—they are part of the game. Most scholars know this and those who do not soon learn the rules if they wish to use the act. Whether the CIA's tactics are acceptable to the Congress is not for me to say.

Here, I am not prepared to go into what I may think is required to improve the FOIA. Rather, it is my opinion that the Congress should be encouraged by the CIA's attempt to gain further exemptions from the FOIA. That, to me, is the best evidence that the FOIA is working, albeit not completely as some might prefer, but nevertheless still working.

Today, as you consider the CIA's request to get partially out from under the FOIA, I think it is worthwhile to come back to my first point. The CIA has not made its case. There is nothing in the thousands of pages of material which the Agency has released that threatens national security or imperils its sources and methods. Nor do I believe

that their case can be made in executive session before any of the appropriate committees of the Congress.

On the other hand, as a citizen, I am more comfortable in knowing that I and other scholars can use the FOIA to seek the truth and use that truth to inform our fellow citizens. Intelligence is important and, in paraphrase of Clausewitz, it is too important to be left solely to the spooks and spies who brought us assassination plots, drug experiments, the Bay of Pigs, Operation Chaos, and Lord knows what else.

Thank you, Mr. Chairman. That is my statement.

Mr. PREYER. Thank you, Mr. Corson.

Let us hear from Mr. Lewis before we go to questions.

STATEMENT OF ROBERT LEWIS, CHAIRMAN, FREEDOM OF INFORMATION COMMITTEE, SOCIETY OF PROFESSIONAL JOURNALISTS; ACCOMPANIED BY PETER C. LOVENHEIM, PROJECT DIRECTOR, FREEDOM OF INFORMATION SERVICE CENTER

Mr. LEWIS. Thank you, Mr. Chairman. We appreciate this opportunity to discuss H.R. 7055 and H.R. 7056.

Accompanying me is Peter C. Lovenheim, research attorney for the Society of Professional Journalists, who is a project director of the Freedom of Information Service Center located here in Washington.

The center is a joint effort by the society and the Reporters' Committee for Freedom of the Press to assist journalists in using the Federal and 49 State freedom of information acts.

In a little more than 1 year since the center opened, several hundred reporters have relied on its facilities for help in using the new generation of FOIA laws that have shed light on Federal and State government operations to a degree unknown in most of the world.

I think this subcommittee is to be commended for its role in passing the original 1966 act and subsequent amendments. Some of the disclosures that have come out about the CIA, in our opinion, show that the act is working as Congress intended it to work.

If my statement will be appended in the record, I would like to touch on two or three points in it.

The society agrees with the previous witnesses this morning that the CIA has not made a case for a blanket or even a partial exemption from the Freedom of Information Act. If there is a perception in foreign intelligence communities that their secrets might leak out as a result of our FOIA, we think that that can be dealt with, first, by the CIA continuing to do as Mr. Carlucci says it has been able to do—that is, to keep its legitimately classified secrets secret.

If there is a perception problem, we believe that the language of H.R. 7055 would appear to answer it, although, as I said earlier, we do not think that any remedy has been shown to be needed by the CIA.

However, if the subcommittee does consider H.R. 7055, we think the bill would be improved by restricting its application only to confidential information obtained from confidential sources. This would bring it into conformity with the standard and the (b)(7) exemption of the existing law, which, as you know, prohibits the release by intelligence agencies of "confidential information furnished only by the confidential source."

Mr. Chairman, we are more troubled by the Justice Department's proposal in H.R. 7056 which would allow the CIA and other Federal intelligence-gathering agencies to withhold three extremely broad categories of information by merely certifying that the data cannot be released.

The exempted categories are "intelligence obtained from a person, entity or organization other than a person employed by the U.S. Government." That would appear to cover virtually all information originating outside the CIA, whether or not it is confidential.

The second category is "information which identifies or tends to identify a source or potential source of information or assistance to an intelligence agency." This appears to be so loosely worded as to cover every citizen because virtually everyone is a potential source of information.

Finally, the bill exempts "information concerning the design, function, deployment, exploitation or utilization of scientific or technical systems for the collection of intelligence, but not including any research programs which involve experimentation with or risk to the health or safety of human beings," which would appear to be a step, albeit a small one, in the direction of barring mind control experimentation on humans.

The second category of exempted information would be less sweeping in scope if it were made to apply only to sources of confidential information, rather than to all sources and all potential sources of all information. As it reads, it would put data obtained by an intelligence agency from information repositories such as libraries and newspapers off limits to FOIA requests.

H.R. 7056 also is objectionable because it bars judicial review of a CIA decision not to certify the release of a given body of information. In effect, it would allow the CIA to censure what it releases without court review of whether the Agency was following the intent of Congress.

Prohibiting judicial review would have another adverse effect, Mr. Chairman. It is Congress stated intent that entire records or files should not be withheld under the FOIA merely because portions of them are exempt. This was the substance of the 1974 amendment requiring all agencies to disclose any reasonably segregable nonexempt portion of an otherwise exempt file or record.

Clearly, this requirement can be enforced only when a judge has the ability to review in camera the entire record or file withheld by an agency. By prohibiting judicial review, H.R. 7056 would effectively prevent segregation of nonexempt intelligence materials and permit the withholding, once again, of entire files and records.

Finally, Mr. Chairman, it is extremely difficult for amateurs in the intelligence field, such as journalists are, to pass judgment on this bill without an intimate knowledge of how the information gathered by the CIA is organized and categorized. Does H.R. 7056 apply to 25 percent of all data gathered and generated by the CIA in a year, or 50 percent, or 90 percent?

To properly assess the bill, we would have to have a better reading from the CIA on how it would impact upon the Agency. I would hope the subcommittee would try to get from the Central Intelligence Agency a better understanding of what H.R. 7056 actually does.

Thank you, Mr. Chairman.

Mr. PREYER. Thank you very much, Mr. Lewis.

Without objection, your entire statement will be included in the record at this point.

[Mr. Lewis' prepared statement follows:]

Statement of the Society of Professional Journalists,

Sigma Delti Chi,

Delivered by Robert Lewis

Chairman of the Freedom of Information Committee

Before the House Government Information and Individual Rights Subcommittee

of The House Committee on Government Operations on H.R. 7055

and 7056 and related legislative proposals

May 29, 1980

Mr. Chairman, I appreciate this opportunity to discuss H.R. 7055 and 7056. My name is Robert Lewis. I am a Washington correspondent of Newhouse Newspapers and chairman of the Freedom of Information Committee of the Society of Professional Journalists, Sigma Delta Chi. The Society, as you may know, is the world's largest and most representative organization of journalists. Founded in 1909, we have 300 chapters and 35,000 members in all branches of communications.

Accompanying me is Peter C. Lovenheim, research attorney for the Society who is project director of the Freedom of Information Service Center located in Washington. The Center is a joint effort by the Society and The Reporters Committee for Freedom of the Press to assist journalists in using the federal and 49 state Freedom of Information acts.

In a little more than a year, several hundred reporters have relied on the center for help in using the new generation of FOI laws that have opened federal and state government to a degree unknown in most of the world.

Mr. Chairman, the Society accepts the necessity for a degree of secrecy in foreign intelligence operations even though secrecy in the conduct of public affairs is alien to this country's political heritage and is not consistent with the spirit of the Freedom of Information Act. But we believe Congress must balance secrecy requirements with the desirable goal of conducting the public's business in the open.

A balance between secrecy and sunshine was achieved with the passage in 1966 of the Freedom of Information Act, which requires the Central Intelligence Agency to disclose only those materials which do not harm the national security. The CIA is permitted to withhold information which "could be expected" to impair the national security; it need not prove damage, only the expectation of damage.

The FOI Act contains nine categorical exemptions, several of which are available to the CIA if it desires to contest a Freedom of Information request. The CIA can withhold data involving "internal personnel rules and practices;" "inter-agency or intra-agency memorandums or letters;" personnel files which, if disclosed, would constitute an invasion of privacy; and records which would disclose the identity of a confidential source or investigative techniques, or "endanger the life or physical safety of law enforcement personnel."

For the CIA to seek a near blanket exemption from the FOI Act, one might expect there has been a plethora of disclosures of classified data as a result of FOI requests. Just the opposite is the case, however. Frank Carlucci, CIA deputy director acknowledges that the FOIA has not led to the disclosure of national intelligence secrets. Sensitive data "is and will continue to be well protected," Mr. Carlucci said last February 20.

What the CIA is concerned about is the perception of United States allies and foreign agents that America's FOI Act will compromise their intelligence operations; that intelligence secrets will leak out through use of the FOIA. "It is, in the final analysis, their perception -- not ours -- which counts," Mr. Carlucci says.

The Society believes that the CIA can best deal with this concern by continuing to keep its legitimate secrets secret. And, if it is a problem of how foreign agents perceive the FOIA, a perceptual solution would be preferable to the proposed FOIA blanket exemption. H.R. 7055 would add a tenth exemption to the FOIA which would ban the release of information .. "obtained, under an express promise of confidentiality, by the Central Intelligence Agency either from a secret intelligence source or from a foreign intelligence service." While the Society believes the current FOI Act is adequate as is and should not be changed, the language of H.R. 7055 would appear to answer the specific objection raised by Mr. Carlucci without completely shielding the CIA from public scrutiny. However, we believe this bill should be amended to restrict its application only to obtain confidential information from confidential sources. This would make it conform to the standard in the B-7 exemption of existing law, which prohibits the release by intelligence agencies of "confidential information furnished only by the confidential source."

We are more troubled by the Justice Department's proposal, H.R. 7056, would allow the CIA and other federal intelligence-gathering agencies to withold three extremely certifying that the data should not be released.

The exempted categories are: "intelligence obtained from a person, entity, or organization other than a person employed by the U.S. government" (which covers all information originating outside the CIA, whether or not it is confidential); "information which identifies or tends to identify a source or potential source of information or assistance to an intelligence agency," (which is so loosely worded as to cover every citizen because virtually everyone is a "potential" source of information); and "information concerning the design, function, deployment, exploitation or utilization of scientific or technical systems for the collection of intelligence, but not including any research programs which involve experimentation with or risk to the health or safety of human beings (which is a step, albeit a small one, in the direction of barring mind-control experimentation on humans.)

The second category of exempted information would be less sweeping in scope if it were made to apply only to sources of confidential information rather than all sources and potential sources of all information. As it reads, it would put data obtained from information repositories, such as libraries and newspapers, off limits to FOI requests.

H.R. 7056 also is objectionable because it bars judicial review of a CIA decision not to certify the release of a given body of information. In effect, it allows the CIA to censor what is released, without court review of whether the agency was following Congress's intent.

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Prohibiting judicial review would have another adverse effect. It is Congress' stated intent that entire records or files should not be withheld under the FOI Act merely because portions of them are exempt. This was the substance of an amendment to the Act in 1974 requiring all agencies to disclose any "reasonably segregable" non-exempt portion of an otherwise exempt file or record. Clearly, this requirement can be enforced only when a judge has the ability to review, in camera, the entire record or file withheld by an agency. By prohibiting judicial review, however, HR 7056 would effectively prevent segregation of non-exempt intelligence materials and permit withholding once again of entire files and records.

Further, H.R. 7056 fails in its broad categroical exemption powers to segregate classified information from non-classified information: all data within the three broad categories would be off-limits to the public and the press -- once the CIA director "or a designee" decided that such information should be withheld.

It is difficult to pass judgment on H.R. 7056 without an intimate knowledge of how information gathered by the CIA is organized and categorized. Does H.R. 7056 apply to 25 percent of all data obtained by the agency? Or 50 percent? Or 90 percent? For the Society to properly assess the bill, we need to have a better reading from the CIA of how it would impact on the agency.

Mr. Chairman, as you know reporters have made widespread use of the Freedom of Information Act to write stories about CIA activities--stories which while not desclosing confidential information did cast the agency in poor light.

Disclosures of illegal or questionable CIA break-ins, interception of mail, wiretapping and surveillance of peaceful and lawful antiwar and civil rights groups have received wide circulation, and helped foster a public opinion climate that resulted in the CIA Charter proposals recently introduced in Congress. A Survey of news stories written from documents released under the FOIA was contained in a February 16, 1980, report of the Congressional Research Service and included:

(1) The CIA conducted far broader domestic surveillance during the Vietnam War than had been reported. For example, the agency kept files that indexed 50,000 members of the California Peace and Freedom Party.

(2) The CIA infiltrated black activist organizations, the Resurrection City encampment in Washington and the District of Columbia school system in the late 1960s despite its own findings that black militant groups at the time posed no threat to the agency.

(3) The CIA explored the prospect of an individual being induced to commit an assassination against his or her will through behavior control.

(4) The CIA considered experimenting on terminal cancer patients under the guise of "legitimate medical work" in an effort to find ways to "knock off key guys" through such natural causes as heart attacks.

A report by the Center for National Security Studies listed 50 articles or books that had been based entirely or partially on CIA documents declassified through the FOI.

Among them were:

(1) Illegal domestic intelligence, including the stationing of agents on "problem campuses" and opening the mail of U.S. citizens.

(2) The use of satellites by the CIA to spy on anti-war protesters in the United States.

(3) Secret "mind manipulation" experiments on human subjects.

In addition, historians used the FOI Act in the preparation of scholarly background studies on American policy toward Greece in World War II, the Bay of Pigs invasion of Cuba, Truman's decision to intervene in Korea, the Cuban missile crisis and the penetration of Nazi Germany by American secret agents in World War II.

Clearly, the Freedom of Information Act, as it applies to the CIA has contributed in a major way to public knowledge and understanding of what is an increasingly important activity of government. And it has helped to keep the CIA accountable to the citizens it serves.

For the CIA to seek a sweeping exemption when a case has not been made for one raises the suspicion that the Agency really wants only to avoid a repetition of the embarrassing disclosures of the past. Thank you, Mr. Chairman.

Mr. PREYER. Mr. Corson, let me ask you this. You talked about the unpredictability of the CIA's response to requests for information. In your experience, is the CIA's response to requests evenhanded in the sense that critics and friends of the Agency receive similar treatment or dissimilar treatment?

Mr. CORSON. That is a compound question, Mr. Chairman. If one is going to write a pro-Agency book he will find that a good bit of material will be made available to him under FOIA or otherwise, whereas a critic may not receive similar treatment.

As I mentioned, the aspect of unpredictability is very similar to going before Tax Court. You do not know who is going to be in the chair that day. Sometimes you will get a rather quick response and say, "Gee! I did not think I was going to receive that much." It is extremely uneven.

One factor in that unevenness is, again, the embarrassment potential that is involved. Some time ago I had requested information which I knew existed. I wrote to that effect. I wrote to it in a book and I asked for additional information. It was information that had been provided to the Church committee as well.

It was actually item 16 in the so-called Family Jewels. The CIA had no information whatsoever, they said, relative to it. That was because they did not want to unearth or open up the Agency's involvement in the drug traffic in Southeast Asia. That is why. It was just a matter of embarrassment. It was illegal activity or activity that was not in the Congress knowledge and, in one sense anyway, probably not even in the President's knowledge.

Another case in point is what I call the case of the three wives. There is a question, of course, about personal information. One must be assured that you are either the next of kin asking for personal information about someone or that the next of kin is gone.

There are three wives whose husbands have died under very strange circumstances. One was John Arthur Paisley who died in the Chesapeake Bay several years ago. It was a strange, bizarre case of a man who was a low, low level employee. As more was revealed about John Paisley he was much more than that.

I have seen the correspondence between Mrs. Paisley and Admiral Turner and it is rather interesting.

A second was the disappearance of an agent called Schadrin in Vienna in 1976. Mrs. Schadrin, up to a point, was receiving a great deal of support from the Government in trying to find out what happened to her husband.

The third one is the wife of Ralph Sigler. Ralph Sigler was electrocuted in one of the most bizarre suicides that has occurred in modern times in a motel in Maryland.

I mention these because when Mrs. Sigler was just trying to find out what happened to her husband—she had a general idea about what he had done—Mr. Alexander, the Secretary of the Army, responded to her and said that he could not reveal the information to her or to her attorney because of Executive privilege. I have not heard that word around this town for awhile but it was used by the Secretary of the Army in this regard.

These are three very strange cases. There are other murders that go back.

One would think that those women should be allowed to have the information that they need. As a matter of fact, in the correspondence from Admiral Turner to Mrs. Schadrin he lied. He lied in his statement to her.

Mr. PREYER. Let me ask Mr. Lewis this and maybe Mr. Corson would want to comment on it too. In the documents that have been released to you through the Freedom of Information Act do you find that the CIA has been effective in deleting information from the documents so that sources could in no way be identified? This is the great fear that sources like the Polish colonel have, that they could be identified when they should not be identified.

Do you find that the CIA has been effective in deleting that information that could identify a source or is there slippage there?

Mr. LEWIS. I personally have not used the act to get information on the CIA. I have used it in a number of other instances. From documents I have seen, that the CIA has released to other reporters and other individuals in response to FOIA requests it has been my experience that they have been more than effective in deleting any references that would compromise their intelligence gathering or the names of informants.

Mr. PREYER. What have you found in writing your books, Mr. Corson?

Mr. CORSON. Occasionally they make a mistake. I have been on both sides of the fence on this particular issue. Occasionally in the Agency's response they have made an error in the sense that, if I had been on the other side of the fence, I would not have named that particular source in the document.

You can construct how this occurs. It was that the people who were carrying out the review of it had not circulated it sufficiently within the Agency for appropriate comment and review. If it had come to me in that particular case I would have deleted that name. I would have left some of the other material.

By and large, however, the shielding of confidential sources is extremely effective. I would say that something else happens on a few occasions, as I have mentioned, but they have been low level sources and I think there has been no great hazard to national security in any way, shape, or form.

Mr. PREYER. The CIA has previously suggested limiting access to finished intelligence products. I wonder if either one of you would have any comments on the impact that that kind of restriction might have on requesters of information or on the different kinds of material that it might make available.

Mr. LEWIS. As I understand it, they voluntarily release the results of finished intelligence reports now. You do not have to go through the Freedom of Information Act, so to give that away is to really give nothing.

Mr. PREYER. If you limit it just to that, then I guess what you are saying is that you are in effect undercutting the whole Freedom of Information Act.

Mr. LEWIS. You would be giving the CIA the blanket exemption it sought in the CIA charter legislation before the House Intelligence Committee, I would suspect.

Mr. CORSON. I think, Mr. Chairman, this is part of this Trojan horse. This must be its tail. They are in the business. There is no such thing as finished intelligence.

Mr. PREYER. I guess we are speaking in terms of words of art, rather than reality. There is a category described as finished intelligence, is there not?

Mr. CORSON. Yes. We can say it is an intelligence report, but it would deal with a segment of time. If they are prepared to say that a segment of time—if that segment of time can be separated, then that is fine.

Take the Bay of Pigs. The beat goes on with respect to our intelligence activities in Cuba. If it is all considered to be part of a continuum then the finished intelligence will never, as I see it, be completed.

I have gone overseas, come back, and literally found people in the JCS working on the same project that they were working on 3 years before. It never ends. Our conflicts with Communists around the world are continuing. They do not stop.

Mr. PREYER. Mr. Lewis, let me ask you how effective the Freedom of Information Act is in a business that has pressing deadlines to meet.

Mr. LEWIS. It is very difficult when a reporter is on a deadline and he needs a piece of information to complete a story that he is writing. It is difficult when he is held up for days or weeks at a time.

One saving grace is that some agencies will just automatically ask a reporter to file an FOIA request and will just automatically turn the information over, but some agencies have adopted a policy of releasing information that may be in a grey area as to whether it should be released voluntarily or not, wherein they automatically ask a reporter to file an FOIA request, and he can have it tomorrow.

Mr. PREYER. Have you found any indication that the CIA, knowing that you are up against deadlines, delays release of routine information beyond the deadline period?

Mr. LEWIS. I have no personal information on that.

Mr. PREYER. Are there any questions that the staff wishes to ask at this time.

[General response of "No."]

Mr. PREYER. We do want to thank you for being with us today. We want to thank all of the witnesses who have given us their thoughts today on whether or not the Freedom of Information Act ought to be further amended to further exempt intelligence information from disclosure. We will look forward at a later date to what the CIA and other experts feel about the views that have been expressed here today.

Your views have been very helpful and very interesting. We will look forward to keeping in touch with you on this as we continue to discuss this legislation. Thank you very much.

The committee stands adjourned.

[Whereupon, at 11:45 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

Summary of Freedom of Information Act Litigation Involving the Central Intelligence Agency Prepared by the Congressional Research Service (February 1980)

The Central Intelligence Agency has proposed changes in existing law which would relieve it of many of the burdens of FOIA requests and litigation. The Director presently is "responsible for protecting intelligence sources and methods from unauthorized disclosure" (50 U.S.C. 403(d)(3), 403g). The proposed amendments would be in "furtherance of " that responsibility and would provide that "information in files maintained by an intelligence agency or component of the United States Government shall also be exempted from the provisions of any law which requires publication or disclosure, or search or review in connection therewith, if such files have been specificially designated by the Director of Central Intelligence to be concerned with:" (there follows a listing of such matters as material related to the collection of foreign intelligence or counter-intelligence, special operations, source investigations, and liaison and information exchange relationships with foreign governments). An exception to the foregoing exemption is made for information contained in designated files on citizens and permanent resident aliens which is requested by such persons.

Thus, information contained in specifically designated files would, under the proposed amendments, not only be exempt from disclsoure but the custodian of such information would also be relieved of the duty to search for information in such files in response to an FOIA request. The thrust of recent FOIA litigation involving intelligence or national security information has been the procedural aspects of an intelligence agency's response to FOIA requests and lawsuits. Little information has actually been ordered released. The posture of the recent cases has been mainly a review of the adequacy of agency showings justifying withholding of particular information. Once adequate justification

is proffered by the agency, information sought to be withheld has not been ordered disclosed by the courts.

In amending the FOIA in 1974, the Congress expanded the scope of judicial review of agency claims that information was classified and therefore exempt from disclosure under Exemption One of the Act. Courts were also specifically authorized to review documents in camera to determine the applicability of exemptions. In 1976, Exemption Three was also amended to narrow the category of other statutes which can be relied upon to withhold information. However, with respect to classified information, the 1974 conferees recognized "that the Executive departments responsible for national defense and foreign policy matters have unique insights into what adverse affects might occur as a result of public disclosure of a particular classified record" and that they expected that Federal courts "will accord substantial weight to an agency's affidavit concerning the details of the classified status of the disputed record." S. Rep. No. 93-1200, 93d Cong., 2d Sess. 12 (1974). It was also intended, and courts have so held, that the two statutes protecting "intelligence sources and methods" and other intelligence agency data, which the CIA now seeks to amend, are embraced by Exemption Three and provide authority to withhold the information described therein. 50 U.S.C. 403(d)(3); 403g. Goland v. Central Intelligence Agency, 607 F.2d 339 (CADC 1978); Baker v. Central Intelligence Agency, 580 F.2d 664 (CADC 1978); Weissman v. Central Intelligence Agency, 565 F.2d 692 (CADC 1977). A similar, but broader statute, authorizing withholding of information relating to the organization, functions, activities, or personnel of the National Security Agency, has also been held to be a (b)(3) statute for purposes of the FOIA. 50 U.S.C. 402 note (1976);

Hayden v. National Sec. Agcy./Cent. Sec. Serv., 608 F.2d 1381 (CADC 1979); Founding Church of Scientology v. National Security Agency, No. 77-1975 (CADC, May 15, 1979).

The question in recent litigation, therefore, has not been the presence of authority to withhold intelligence information but rather whether the agency has sufficiently demonstrated that the information sought to be withheld comes within the terms of the withholding statute or has been properly classified. Courts are required to review the agency's decision de novo, with the burden of demonstrating exemption from the FOIA placed on the agency. However, "substantial weight" is to be given to agency affidavits which contain sufficiently detailed justifications for nondisclosure and are not vague or conclusory. Particular exemptions relied upon must be keyed to specific information. While in camera examination of withheld documents is available in national security cases as in all other FOIA cases, detailed affidavits may make such examination unnecessary. Hayden, supra; Ray v. Turner, 587 F.2d 1187, 1194 (CADC 1978); Goland, supra; Founding Church of Scientology, supra.

While public justification of nondisclosure is desirable, courts have recognized that the sensitivity of certain intelligence information may require extraordinary measures to preserve secrecy. The filing of sealed affidavits in camera has been permitted, and has been seen to be especially necessary when the agency feels it is unable to even confirm the existence of FOIA responsive record. Phillippi v. Central Intelligence Agency, 546 F.2d 1009 (CADC 1976); cf. Medoff v. U.S. Central Intelligence Agency, 464 F. Supp. 158 (D.N.J 1978). See also, Founding Church of Scientology, supra; Halperin v. Central Intelligence Agency, 446 F. Supp. 661 (D.D.C. 1978). In camera hearings have also been conducted without the presence of plaintiff's counsel in order to enable the agency

to justify its withholding decision. Kanter v. Department of State, 479 F. Supp. 921 (D.D.C. 1979); Hayden, supra. As the court in Hayden recognized, "In a limited range of security cases, it is simply not possible to provide for orderly and responsible decision making about what is to be disclosed, without some sacrifice to the pure adversary process." 608 F.2d at 1385.

The failure of an agency to justify withholding of intelligence or national security information under the FOIA has not always precipitated court ordered release of such information. In Halperin v. Department of State, 565 F.2d 699 (CADC 1977), the agency was unable to show that certain information (transcripts of Kissinger press conferences) was properly classified and therefore exempt under (b)(1). However, the court, hesitant "to order release of material that would allegedly do grave damage to national security," ordered the District Court to examine the records and indicated that a prior restraint rationale to prevent disclosure might be applicable. Similarly, in Sims v. Central Intelligence Agency, 479 F. Supp. 84 (D.D.C. 1979), the court, after the agency failed to sustain its burden under (b)(3), permitted the agency to reexamine the documents and "act on the possibility of classifying information held to be otherwise discloseable." 479 F. Supp. at 88.

Thus, the burden placed on intelligence agencies by the FOIA has not been the court-ordered disclosure of intelligence information but rather the necessity to search and review records and justify their nondisclosure. The search and review responsibility is shared to a greater or lesser degree by all agencies subject to the Act. The burden to justify withholding is also required of all agencies, but the courts have devised special procedures, in light of the sensitivity of the information, when claims are made based on national

security. The burden is still on an intelligence agency to justify withholding of information, but sealed affidavits or other in camera proceedings may be provided to insure secrecy in the course of deciding the FOIA case. If reasonable efforts to locate responsive documents are shown to have been made and their withholding is adequately justified, intelligence information can be, and has been, protected. See, Ray v. Turner, 468 F. Supp. 730 (D.D.C. 1979) (on remand) (CIA justified withholding of information); Goland, supra.

Finally, it might be noted that the proposed CIA amendments exempt designated files from disclosure and search and review under the FOIA, "except to the extent that information on American citizens and permanent resident aliens requested by such persons on themselves... may be contained in such files." Many of the major cases dealing with the duties and special problems of intelligence agencies under the FOIA involved requests by individuals for their own files. Hayden, supra; Ray v. Turner, supra; Marks v. Central Intelligence Agcy., 590 F.2d 997 (CADC 1978); Weissman, supra; Fonda v. Central Intelligence Agency, 434 F. Supp. 498 (D.D.C. 1977); Ferry v. Central Intelligence Agency, 458 F. Supp. 664 (S.D.N.Y. 1978).

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